



3800 Laverne Avenue North
Lake Elmo, MN 55042

(651) 747-3900
www.lakeelmo.org

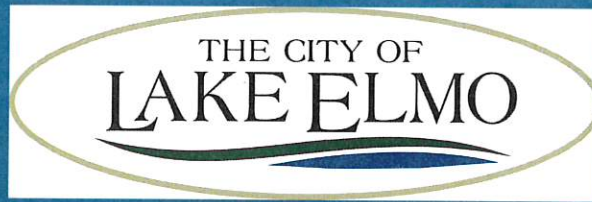
NOTICE OF MEETING

The City of Lake Elmo
Planning Commission will conduct a meeting on
Monday June 27, 2022
at 7:00 p.m.

AGENDA

1. Pledge of Allegiance
2. Approve Agenda
3. Approve Minutes – N/A
4. Public Hearings – N/A
5. New/Unfinished Business – N/A
6. Training
 - a. Role of the Planning Commission
 - b. Procedures
 - i. Variances
 - ii. Conditional Use Permits
7. Communications/Updates
 - a. June 21, 2022 City Council Actions
 - i. 8012 Hill Trail North Variance Request – *Approved* - Resolution 2022-064
 - ii. Zoning Text Amendment – Increased Building Setbacks in Certain Areas in the South Planning Area – *Tabled for further consideration*
 - iii. Zoning Text Amendment – Requirement for Mix of Uses in Mixed-Use Commercial and Mixed-Use Business Park Districts – *Tabled for further consideration*
 - iv. Zoning Text Amendment – Amend Article XIII Village Mixed Use District to Incorporate Two New Zoning Districts (V-MDR and V-HDR) in Compliance with the 2040 Comprehensive Plan – *Approved* - Ordinance 2022-10; Resolution 2022-067
8. Adjourn

***Note: Every effort will be made to accommodate person or persons that need special considerations to attend this meeting due to a health condition or disability. Please contact the Lake Elmo City Clerk if you are in need of special accommodations.



PLANNING COMMISSION MEMBER HANDBOOK

3880 Laverne Avenue North Lake Elmo, Minnesota 55042

Planning Commission Handbook

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Inside the City

Mission

"The mission of the City of Lake Elmo is to provide planned, quality public services consistent with the City's character in a fiscally responsible manner

Vision

Ethics and Integrity – We believe that ethics and integrity are the foundation of public trust and confidence and that all meaningful relationships are built on these values.

Visionary Leadership and Planning – We believe that the very essence of leadership is to be visionary and innovative while planning for the future.

Excellence and Quality in the Delivery of Services – We believe that service to our residents is our reason for being and commit to delivering services in a professional, cost-effective, and efficient manner.

Fiscal Responsibility – We believe that fiscal responsibility and prudent stewardship of public funds, both short-term and long-term, are essential for citizen confidence in government.

Open and Honest Communication – We believe that open and honest communication is paramount for an involved citizenry and fosters a positive working environment for employees.

Respect for the Individual – We believe that citizens we serve are to be treated with the utmost respect and deserve the best treatment the City can provide.

Thoughtful Community Building – We believe in the development of our community through thoughtful, careful planning that is communicated in a positive manner that enhances the process.

Professionalism – We believe that continuous improvement and innovation is the mark of a professional organization and we are committed to applying this principle to the services we offer and development of employees.

Accountability – We believe in decision-making processes that are based on facts, data, and the prioritization of community interests above the individual.

Local Government Structure

Lake Elmo is a statutory Plan A City.

- City Council consist of the Mayor and four Council members
- The Vote of the Mayor counts the same as a council members vote
- The City Council is responsible for the Legislative and Policy decisions
- City Council Employs the City Administrator, who oversees the day-to-day operations of the city

City Council



Mayor: Charles Cadenhead



Jeff Holtz



Katrina Beckstrom



Dale Dorschner



Lisa McGinn

Staff Liaisons

Ken Roberts- Planning Director
Email: Kroberts@lakeelmo.org
Phone: (651) 747-3912

Ben Prchal- City Planner
Email: Bprchal@lakeelmo.org
Phone: (651) 747-3911

Diane Wendt- Permit Technician
Email: Dwendt@lakeelmo.org
Phone: (651) 747-3918

Commission Functions

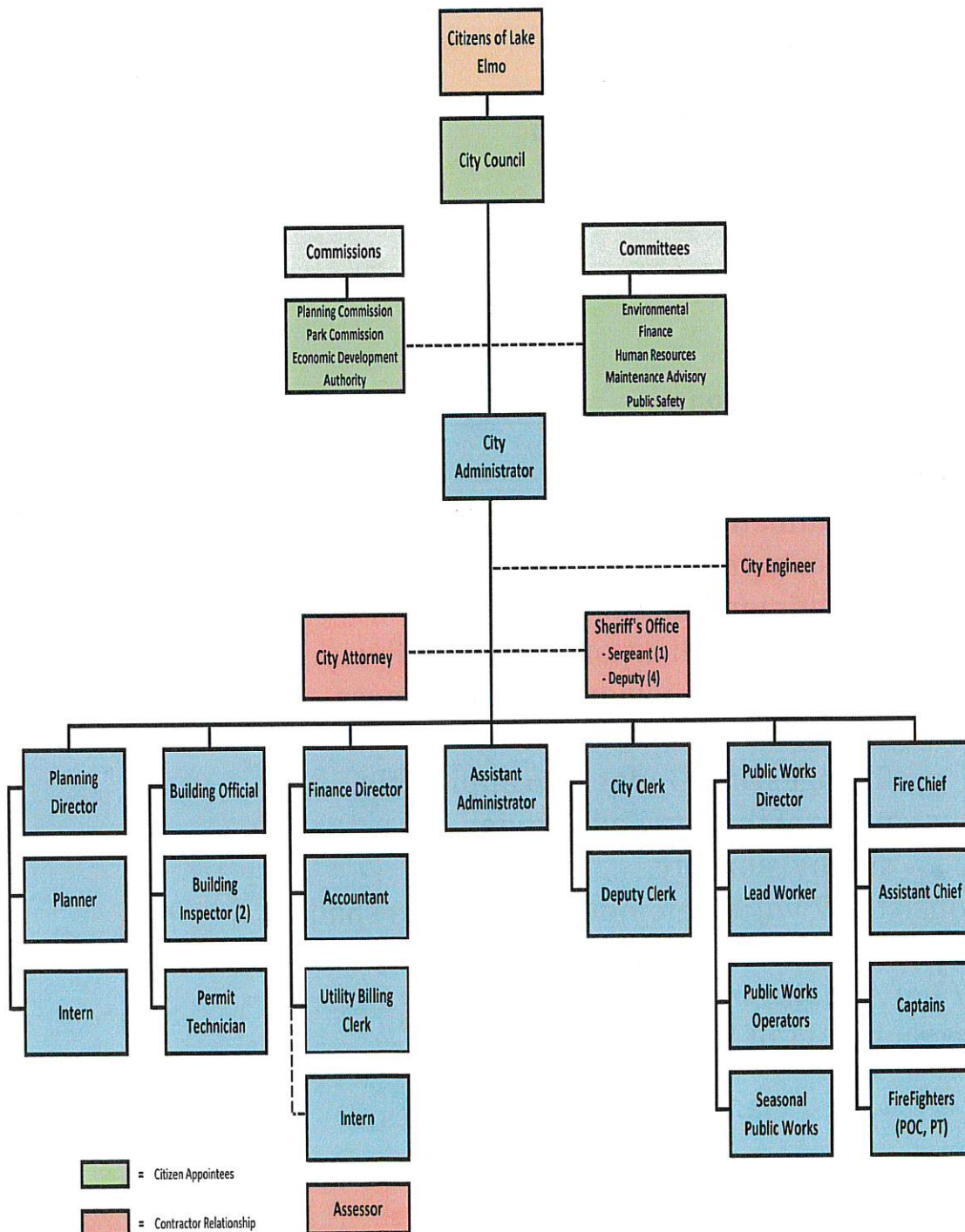
Planning Commission

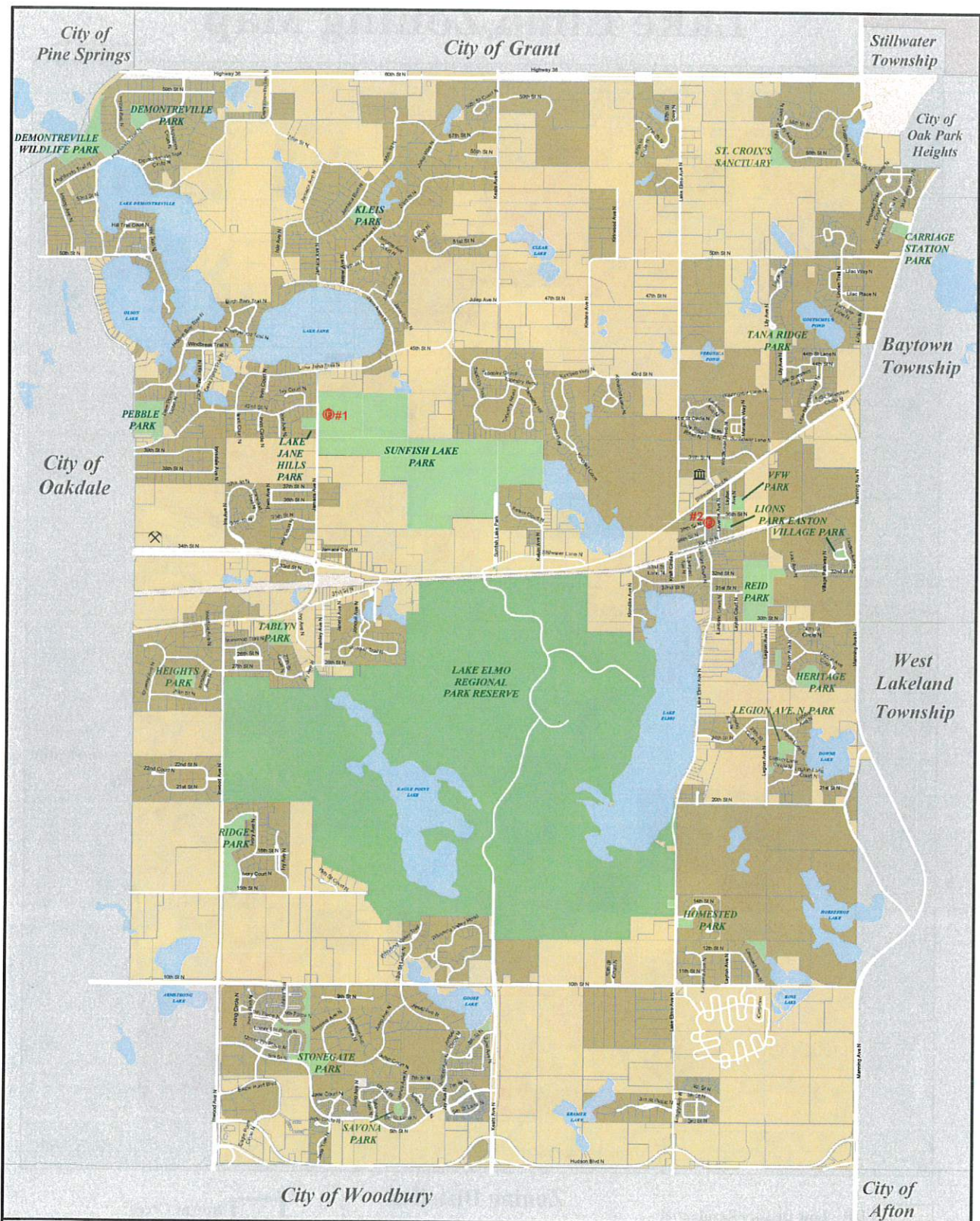
- Make recommendations regarding
 - The comprehensive Plan and amendments to the plan
 - Land use application, conditional use permits, subdivisions, and variances, Planned unit developments.
 - Changes and Updates to applicable parts of the city code- zone, subdivision, etc.
- Consist of 7 voting members; Members shall be Appointed for year terms so that only 1/3 of Appointments will expire on December 31 of Year.

City Departments



Organization Chart





Lake Elmo Street and Parks Map



0.5 0.25 0 0.5 Miles



Map Date: June 2018

Created By: Planning Department



City Hall
3800 Laverne Avenue N



Public Works Building
3445 Ideal Ave N



Fire Stations

Station No. 1
3510 Laverne Ave N
Station No. 2
4259 Jamaica Ave N

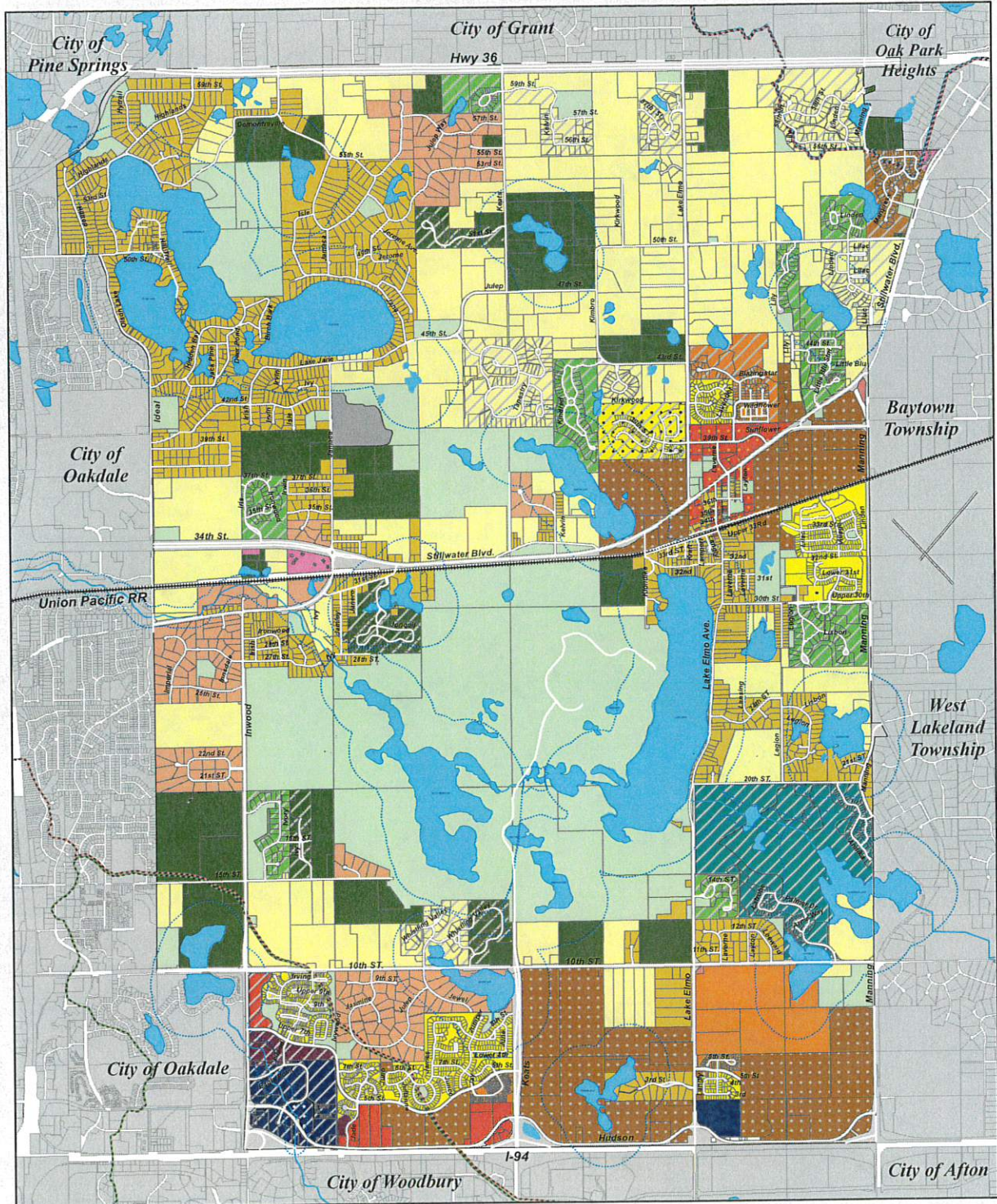
Carriage Station Park
Demontreville Park
Demontreville Wildlife Park
Eason Village Park
Heights Park
Heritage Park
Homestead Park
Kleis Park
Lake Jane Hills Park
Legion Ave. N. Park
Lions Park
Pebble Park
Reid Park
Ridge Park
St. Croix's Sanctuary
Stonegate Park
Sunfish Lake Park
Tablyn Park
Tuna Ridge Park
VFW Park

Marquess Trail N. and Stillwater Blvd N.
5700 Highlands Trail N.
7950 Demontreville Trail North
26th St. and Imperial Ave.
2700 Block of Lisbon Ave.
14th St. and Lake Elmo Ave.
5285 Jamaica Blvd.
Jamaica Ave. N. and 42nd St.
Legion Ave. N. and Legion Lane N.
3525 Laverne Ave. N.
8160 Lake Jane Trail N.
11430 - 30th Street N.
15th St. and Inwood Ave.
Lily Ave. and 58th St.
750 Jasmine
10000 Stillwater Lane N.
8735 Stillwater Blvd.
4525 Lily Ave.
3675 Layton Ave.



Lake Elmo Zoning Map

Data Source: Washington County
Updated by LE Planning Dept January 2021



Zoning Districts

- LDR - Low Density Residential
- MDR - Medium Density Residential
- HDR - High Density Residential
- R2 - One & Two-Family Residential
- LC - Limited Commercial
- C - Commercial
- CC - Convenience Commercial
- BP - Business Park
- MU BP - Mixed Use Business Park
- MU C - Mixed Use Commercial

- RS - Rural Single Family
- RE - Residential Estate
- RR - Rural Residential
- RT - Rural Transitional
- A - Agricultural
- GCC - Golf Course Community
- OP - Openspace PUD
- VMX - Village Mixed Use
- V-LDR - Village Low Density Residential

- Browns Creek
- South Washington
- Valley Branch
- Shoreland Buffer
- Water Body
- Closed Landfill
- PF - Public Facilities
- Hatching Represents
- Planned Unit Developments (PUD)



ABOUT COMMISSIONS AND COMMITTEES

Commissions and Committees Role

Objective of Commissions and Committees

- City Council establishes Commissions and Committees to engage residents in city work and provide a variety of perspectives
- City Staff support Commissions and Committees to ensure effective governance
- Commissions and Committees do meaningful work for the city and residents

Supporting City Council

- Lake Elmo's Commissions and Committees are established by the City Council and serve as advisors to the council.
- See page 6

Commissions and Committees are expected to support the City Council and serve at the discretion of City Council.

Commission Role	Not Commission Role
<ul style="list-style-type: none">• The Commission shall exercise the duties conferred upon it by this code. It shall be the purpose of the Planning Commission to prepare and adopt a Comprehensive Plan for the physical development of the city, including proposed public buildings, street arrangements and improvements, efficient design of major thoroughfares for moving of traffic, parking facilities, public utilities services, parks and playgrounds, a general land use plan, and other matters relating to the physical development of the city.• The Planning Commission shall also perform reviews and provide recommendations to the City Council the following items:<ul style="list-style-type: none">◦ Zoning ordinance or text amendments◦ Conditional Use Permits◦ Subdivisions Major and Minor◦ Planned Unit Development Request (PUD)◦ Variance Request◦ Five year Capital Improvement Program◦ Annual Work Plan◦ All Necessary reviews pertaining to the comprehensive plan, amendments, or otherwise	<ul style="list-style-type: none">• Do not direct the work of City staff• Do not take responsibility for financial performance of any city facility or program

Key Players

Chair

- Lead meeting and facilitate discussion
- Ensure bylaws are followed
- Maintain meeting decorum
- Facilitate development of annual work plan
- Consult with members regarding attendance issues
- Encourage participation by all members and the public

Vice Chair

- Support the Chair as needed
- Performs the Chair duties if the Chair is unavailable

City Code and Bylaws

City Code:

To locate City Codes citing Planning Commissions see Appendix A

Bylaws:

Rules established to regulate the Commissions and Committees, as allowed by the City Council. The City Council establishes and approves bylaws. Each Commission and Committee's bylaws can be located on their individual webpage.

Annual Calendar

Work Plan:

Annual work plans ensure that the Commissions' initiatives are aligned with the City Council's priorities.

2021 Planning Commission Work Plan

Prepared by the Lake Elmo Planning Commission:
12/14/20 Accepted by the City Council: 01/05/21



Key

Status	C – Complete IP – In Progress
PL	Priority Level (1-5 with 1 being the highest priority)

Project and Description	PL	Status
Zoning Map Amendments		
• Ongoing as zoning map amendments are requested.	1	IP
Code Amendments		
• Codify Zoning Ordinance – ongoing as amendments are requested and approved	1	IP
•		
• Refine Design Guidelines and Manual to enhance a more pedestrian scale and provide clear and descriptive elements to incorporate into urbanizing and redevelopment areas of the community.	5	
• Review and make recommendations to the City Council about new Airport Zoning regulations after their approval by the Lake Elmo Airport JAZB, MAC and MnDOT	2	IP
• Make recommendations about proposed Tree Preservation and Landscape ordinance updates	2	IP
• Begin making corrections to the Zoning code for cleanup	3	IP
Comprehensive Plan Amendments		
2040 Comprehensive Plan Update		
• Address amendments to the Comprehensive Plan as needed or requested	3	IP
Other Planning Initiatives		
• Submit application for new Village Parkway railroad crossing	4	IP
• Develop a policy or ordinance for stormwater reuse	3	
• Add/Review Planning Module from Permit Works to track planning and zoning applications	3	
• Investigate conservation easement holder options/city policy	1	
•		
• Create educational materials that may include a brochure, website, or other publication to communicate the intended and planned development patterns in the urbanizing area	4	

<ul style="list-style-type: none"> Participate in the planning for and the expected land uses for the City-owned 180 acres of land near County Road 14 and Ideal Avenue 	2	IP
<ul style="list-style-type: none"> Determine how new Airport zoning regulations from Lake Elmo Airport JAZB, MnDOT and the MAC will be implemented and regulated. 		
Ongoing Planning Activities		
<ul style="list-style-type: none"> Planning Commission review of City Capital Improvement Plan for consistency with Comprehensive Plan 	3	IP
<ul style="list-style-type: none"> Provide support to code enforcement program with the Building Inspector as the City's code enforcement officer 	3	IP
<ul style="list-style-type: none"> Conduct review of 201 (community) septic system policies and management practices. Develop system for proper oversight, billing, and maintenance of community systems. 	3	IP
<ul style="list-style-type: none"> Streamline & Improve Policies/Procedures for the handling of routine land matters including but not limited to variances, site plan review, setbacks et al; 	1	IP
<ul style="list-style-type: none"> Consistently update the City Code on the City website as well as American Legal (Soon to be Muni Code) 	3	IP
<ul style="list-style-type: none"> Update Permits and Land Use Applications 	3	IP

PLANNING COMMISSION MEETING

Types of Meetings

Regular Meeting:

- Regular meetings shall be held in the City Hall at 7:00 p.m. on the second and fourth Mondays of each month.
- A regular meeting may be canceled or rescheduled by the Chair at a prior meeting or if there are no scheduled agenda items on the Thursday prior to the meeting.
- All action taken by the Commission shall be by the affirmative vote of a majority of the members present.
- No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date.

Special Meetings:

- Special meetings for the Commission may be called by the Chair following four (4) days posted notice at City Hall

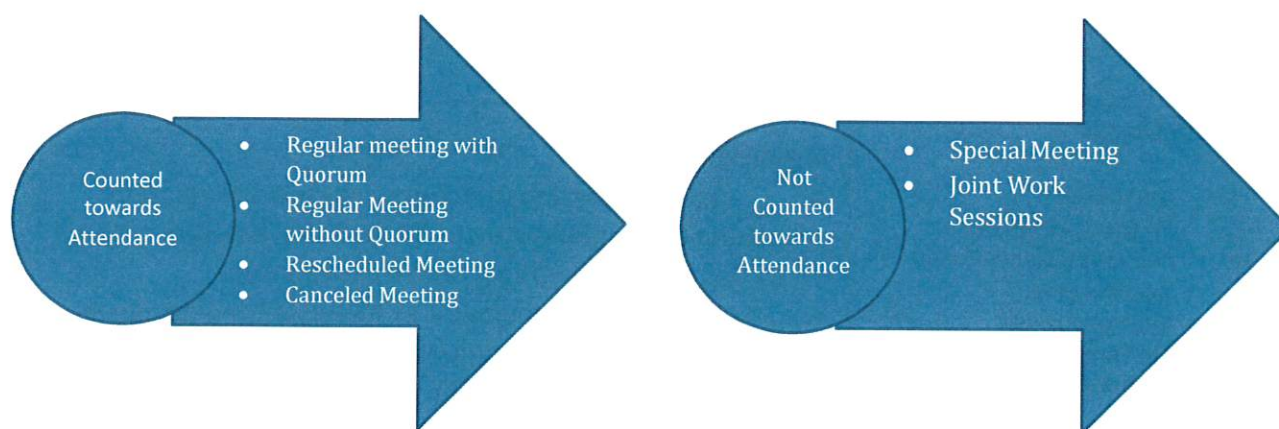
Attendance

Attendance:

A record of attendance is maintained by the staff liaison. They are included with every meeting packet for individual monitoring

Attendance Policy:

Any member may be removed by a majority of the Council, for cause. Cause shall include but not limited to having more than 3 consecutive absences or being absent from more than 1/3 ~ 33% of the meetings in any 1 year calendar year, Changing primary residence to a location outside of the City of Lake Elmo, and also exhibiting behavior disruptive to the good order and efficiency of the Planning Commission



Quorum and Voting

Quorum – A majority of seated voting members (Present)

- Quorum consist of 4 members (for 7 member Commission)
 - When members are not at a public meeting they must avoid discussing or responding to City business when there are more than two members involved with the conversation.
 - Doing so can easily constitute a violation of the State's open meeting laws
 - Members must abide by all aspects of the open meeting law including serial meeting and electronic communication

Voting:

- If any member has a personal interest of any kind in the matter before the Commission, the member shall disclose the interest and be disqualified from voting upon the matter – **It shall be record in the minutes that no vote was cast by the member.**
- Each member attending any meeting shall be entitled to one vote.
- Voting shall be by voice or by raise of hand.

Meeting Packet

Each meeting packet contains:

- Agenda
- Draft Minutes
- Reports and Recommendations
- Correspondence
- Relevant background information for the meeting

Meeting packages must be sent out 3 days in advance to the scheduled meeting, **it is paramount that you review the meeting packet and are prepared prior to the meeting.**

Agenda

Proceedings:

- | | |
|-------|---|
| I. | Call to Order |
| II. | Pledge of Allegiance |
| III. | Public Comment for non-agenda items |
| IV. | Approve Agenda |
| V. | Approve Minutes |
| VI. | Business Items <ul style="list-style-type: none">a. Public Comments, by approval of the Chair |
| VII. | Communication/Updates |
| VIII. | Adjournment |

Agenda:

- If a Commission member wishes to add an item to agenda they must contact City Staff the Tuesday of the week before the meeting to make the request
- The City Administrator or an Appointed designee shall advise the Chairperson of any matters the Commission must consider by Council directive, ordinance, or statute and shall have prepared and supply a written agenda of all meetings to all Commission members, the Council, and the public no less than 3 days before each meeting.

Minutes

Minutes constitute a vital record of the city and are the best means of preserving Council intent, findings of facts, and action – **The Staff Liaison must keep a minute book**

Minutes Must Include:

- I. The Commission/Committee members who are present
- II. The type of meeting (regular, special, continued, closed)
- III. Date and place of meeting
- IV. Time the meeting was called to order
- V. Approval of minutes of the previous meeting, with any corrections
- VI. The members who make or second a motion
- VII. A record of all members and their vote for any roll call votes
- VIII. The subject matter of all proposed resolution or ordinances
- IX. Whether any resolution or ordinance is approved or disapproved by vote of the Commission/Committee
- X. The votes of each member voting and any Member not voting
- XI. A statement of the findings of fact and an explanation of Commission/Committee action, including specific reasons for approval and disapproval of specific resolution or ordinances, on all land use licensing matters
- XII. The name of all citizens appearing before the Commission/Committee during the public comment period along with a brief summary of the subject matter of their comments

Rules of Procedure (Robert's Rules of Order)

General Principals:

- Only one subject (main motion) is before the group at one time
- Negative motions are generally not permitted; the motion needs to be phrased as a positive action, if the Commission/Committee does not want to take action the motion can be voted down
- Only one member speaks at a time; each speaker should first be recognized by the chair before making their motion
- Each item is presented for full debate; each member speaks once until all members have had an opportunity to speak
- All members have equal rights; the rights of the minority are protected and heard, but the will of the majority prevails

Steps to a motion

- Members address the chair and the chair recognizes the member
- Member states motion "I move to recommend the policy"
- Another member seconds the motion "I second"
- Chair repeats motion to the Commission
- Motion is discussed by group
- Members can make subsidiary motions that assist the group in disposing of the main motion. "I move to table this discussion to the next meeting"
- Members vote on the subsidiary motion
- If applicable, members vote on the main motion
- Chair announces the results

Subsidiary Motions (Actions on the first motion) ...

To Accomplish this...	Use this Motion...
Avoid taking a direct vote on a motion	Postpone indefinitely
Change the wording of the motion	Amend
Have a Committee discuss a motion in detail and come back with a recommendation	Refer to Committee
Discuss a Motion latter in the meeting, or maybe put it off until your next meeting	Postpone to a definite time
Provide for a certain amount of time for discussion of the motion, either for the subject matter or for each speaker	Limit or Extend limits or Debate
End Debate on the motion and vote now	Close Debate
Stop dealing with the motion temporarily until a majority decides to resume it	Table

COMMUNICATION

Open Meeting Law

Why it exists:

- The open meeting law requires that meeting of public bodies must generally be open to the public
- Prohibits actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or to detect improper influences
- Ensures the public's right to be informed
- Afford the public an opportunity to present its views to the publicbody

To Comply:

- Provide public notice of the meeting a minimum of three days in advance
- Hold meetings in public place.

Communication with City Council

When presenting recommendations to City Council it is essential that Commissions and Committees keep the following in mind:

- Recommendations should be in written form, typically found in the record of the minutes.
- Ideas should be expressed in clear and concise language
- Proposed solutions should be viable and cost-effective
- Recommendations should identify reasons for the change suggested
- Advice should reflect the views of a consensus or a majority of Commissions and Committees members

Role of Staff Liaison- One of their primary roles is to assist in the delivery of information between the Commissions and Committees to the City Council and vice versa

Communication tools- The City Council has limited time to discuss matters and it's important for all the members to receive the information. Due to the time restraints, Commissions and Committees have five primary tools for communication

Meeting Minutes	Meeting minutes are intended to give members a record of Commission/Committee proceedings
Joint work Sessions	Joint work sessions may be held at least once a year. This is an opportunity to update the Council on Commission's work plan.
Annual Work Plan	Annual work plans process enables Commissions to share their goals for the upcoming year. Council will assign each work plan item a Council priority
Staff Reports	Staff reports are prepared by staff to forward a regulatory item or other goal from the Commission's approved work plan a City Council meeting for approval or direction.
Advisory Communication	Advisory Communication is prepared by the Commission members under the direction of the Commission. This is used when the Commission wants to give input on an issue but due to timing or the nature of the issue, and meeting minutes are deemed insufficient.

Communication with the Public

Members are expected to engage in Communication with the public in a respectful manner, they should listen to the speaker, be accountable for their actions, take risk (be genuine), and finally be open with those you are communicating with

The governing body will provide (2) opportunities for public comment during the meeting. First, an opportunity will be given at the onset of the meeting for general comment; second, opportunity will be given to speak on an agenda item at the time the governing body addresses the item

Citizens wishing to speak must sign in and provide their request to the Council, Commission, or Committee Clerk for distribution to the Mayor / Chair. Upon being recognized, you should proceed to the lectern and state your name, address and topic to be discussed. You will be given (6) minutes to speak. **The Chair may interrupt or terminate a citizen's statement when it is too lengthy, personal, insulting, abusive, obscene, or slanderous. Any person acting in an unruly manner may be asked to leave the meeting.**

When a group of persons wishes to address the Council on the same subject matter, they may choose a spokesperson to address the governing body

Media Policy and Communication Guidelines

The Staff Liaison will work with the City's Communication Department or with the City Administrator to coordinate and approve any:

- Public announcements
- Press release
- Media inquires
- Articles and City publications
- Social Media post
- Marketing and graphic design request

ETHICAL AND RESPECTFUL CONDUCT

Conflict of Interest

A public officer, who has authority to take part in making any sale, lease, or contract in his or her official capacity, shall not voluntarily have a personal financial interest in that sale, lease, or contract or personally benefit financially from it. The term “public officer” certainly includes mayors, councilmembers, or other elected officials. It also may include appointed officers and employees who have influence over the decision-making process.

Members who have a conflict of interest must:

- Disclose the conflict of interest to the group
- Abstain from discussing or voting on the matter
- **Any Council member, board, or commission member who willfully conceals their interest as described in this section shall be guilty of a misdemeanor.**

Gifts

- Members may not receive gifts from any “interested person” in conjunction with their Commission duties

Respectful Behavior

Members should strive to:

- Respect others
 - Assume people are honest, don't shame or blame others, no talking about people not present, and respect residents and the city and the city staff
- Listen
 - No interruptions, ask clarifying not interrogating questions, Use “I” statements not “You”
- Accountability
 - Participate to the best of your abilities, be responsible for making sure voices are heard, be accountable to your words, hold other accountable, be responsible for your actions
- Take Risk
 - Be authentic, not be hostile or harassing others
- Personal Reaction
 - Council members should not take things personally, and focus on the ideas being expressed

Members should avoid:

- Speaking over or cutting off another individual's comments
- Insulting, disparaging, or putting down people or their ideas
- Bullying other members by displaying a pattern of belittling, demeaning, judging, or patronizing comments

Violence or the threat of violence will not be tolerated

The Mayor, Chair or Staff Liaison can call for the removal of anyone who threatens or commits an act of violence.

Appendix A

CITY OF LAKE ELMO COUNTY OF WASHINGTON STATE OF MINNESOTA

ORDINANCE NO. 08-218

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title III, Chapter 32, City Organizations, Sections 32.025-32.042, Planning Commission by amending the following language:

§ 32.025 ESTABLISHMENT.

A Planning Commission is continued in the city.
(1997 Code, § 210.01)

§ 32.026 PURPOSE.

The Planning Commission is established to meet the requirements of state statute; to develop and enforce the Comprehensive Plan and amendments to the plan, subject to City Council approval and the requirements of the State Municipal Planning Act; and to review and make recommendations on subdivisions, zoning applications, planned unit developments, and site and building plans as provided by ordinance. No expenditures by the Commission shall be made unless and until authorized for the purpose by the City Council.

(1997 Code, § 210.02)

§ 32.027 COMPOSITION.

The Planning Commission shall consist of 7 voting members. Members shall be appointed for 3-year terms so that only 1/3 of the appointments will expire on December 31 of each year. Appointments will be considered with the available applicant pool. (1997 Code, § 210.03) (Am. Ord. 97-96, passed 1-15-2002; Am. Ord. 97-147, passed 2-15-2005; Am. Ord. 97-200, passed 11-5-2007; Am. Ord. 08-046, passed 6-21-2011)

§ 32.028 QUALIFICATIONS.

Each member shall be a resident of the city. Wherever possible, Commission members should represent all geographical areas of the city and a cross-section of the population of the city at the time of appointment.
(1997 Code, § 210.04)

§ 32.029 REMOVAL.

(A) The Council may consider exceptional circumstances when considering the removal of a planning commission member. Nonetheless, any member may be removed by a majority vote of the City Council, for any of the following reasons;

1. Having more than 3 consecutive unexcused absences from Planning Commission meetings.
2. Being absent from more than 1/3 of the Planning Commission meetings in any 1 calendar year.
3. Changing their primary place of residence to a location outside of the City of Lake Elmo
4. Exhibiting behavior disruptive to the good order and efficiency of the Planning Commission.

(1997 Code, § 210.05) (Am. Ord. 08-172, passed 4-18-2017)

§ 32.030 OFFICERS.

The Commission shall elect a Chairperson and a Vice Chairperson from among its appointed members at the first available date of the each year, for a term of 1 year. The Chairperson shall preside at all meetings of the Commission, if present, and shall perform all other duties and functions required by state statute or assigned by the Commission or the Council. The Vice Chairperson shall perform these duties in the absence of the Chairperson. If a vacancy occurs in the Chairperson's office, the Vice Chairperson shall assume the Chairperson's duties for the remainder of the year, and a new Vice Chairperson shall be elected by the Commission at a special election to be held at the next regularly scheduled Commission meeting. (1997 Code,

§ 32.033 MEETINGS.

- A) The first available meeting of the New Year with a quorum shall be dedicated to the election of officers and other business as scheduled.
- B) Regular meetings shall be held in the City Hall at 7:00 p.m. on the second and fourth Mondays of each month. No action shall be taken in the absence of a quorum except to adjourn the meeting to a subsequent date. A regular meeting may be canceled or rescheduled by the Chair at a prior meeting or if there are no scheduled agenda items on the Thursday prior to the meeting. All action taken by the Commission shall be by the affirmative vote of a majority of the members present.
- C) Special meetings for the Commission may be called by the Chair following four (4) days posted notice at City Hall.
- (1997 Code, § 210.09)

§ 32.035 QUORUM.

A quorum shall consist of 4 members.
(1997 Code, § 210.11) (Am. Ord. 97-14, passed 9-2-1997; Am. Ord. 08-046, passed 6-21-2011)

§ 32.036 VOTING.

Each member attending any meeting shall be entitled to cast 1 vote. Voting shall be by voice vote or by raise of hand. If any member has a personal interest of any kind in the matter before the Commission, the member shall disclose the interest and shall remove themselves from voting on the matter. It shall then be recorded in the minutes that there was a no vote cast by that member. (1997 Code, § 210.12)

§ 32.038 RULES OF PROCEDURE.

All meetings of the Commission shall be conducted in accordance with the Revised Robert's Rules of Order.
(1997 Code, § 210.14)

§ 32.039 AGENDA.

The City Administrator, or appointed designee, shall advise the Chairperson of any matters the Commission must consider by Council directive, ordinance, or statute and shall have prepared and supply a written agenda of all meetings to all Commission members, the Council, and the public no less than 4 days before each meeting.
(1997 Code, § 210.15)

§ 32.040 RECORDS.

Each formal action of the Commission shall be embodied in full upon the minute book as formal motion or resolution. The minutes of each meeting shall be approved at a future meeting. The recommendations and findings of the Commission shall be presented to the Council at the next regularly scheduled Council meeting. The records of meetings and actions and recommendations shall be transmitted to the City Clerk, or appointed designee, for keeping and distribution.
(1997 Code, § 210.16)

§ 32.041 TRAINING.

Commission members shall be encouraged to attend training courses offered by the city, the state, and other government and public training agencies and the Council shall budget for the reimbursement of expenses incurred in training each year.
(1997 Code, § 210.17)

§ 32.042 DUTIES AND POWERS OF THE COMMISSION;

- (A) *Plan.* The Planning Commission shall have the powers and duties given city planning agencies generally by law. The Commission shall also exercise the duties conferred upon it by this code. It

shall be the purpose of the Planning Commission to prepare and adopt a Comprehensive Plan for the physical development of the city, including proposed public buildings, street arrangements and improvements, efficient design of major thoroughfares for moving of traffic, parking facilities, public utilities services, parks and playgrounds, a general land use plan, and other matters relating to the physical development of the city. The plan may be prepared in sections, each of which shall relate to the Comprehensive Plan program. After the Commission has prepared and adopted the Comprehensive Plan, the Commission shall as necessary, review the Comprehensive Plan and any ordinances or program implementing the plan.

(B) *Means of executing plan.* Upon the adoption of a Comprehensive Plan or any section, it shall be the concern of the Planning Commission to recommend to the Council reasonable and practicable means for putting into effect the plan or section in order that the same will serve as a pattern and guide for the orderly physical development of the city and as a basis for judging the timely disbursements of funds to implement the objective. Means of effectuating the plan shall, among other things, consist of a zoning ordinance, subdivision regulations, capital improvement programming and technical review, and recommendations of matters referred to the Planning Commission by the Council.

(C) The Planning Commission shall also perform reviews and provide recommendations to the City Council the following items:

1. Zoning Ordinance or text amendments
2. Conditional Use Permits
3. Subdivisions Major and Minor
4. Planned Unit Development Requests (PUD)
5. Variance Requests
6. Five (5) Year Capital Improvement Program (for consistency with the Comprehensive Plan)
7. Annual Work Plan
8. All necessary reviews pertaining to the Comprehensive plan, amendments, or otherwise

SECTION 2. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 3. Adoption Date. This Ordinance 08-218 was adopted on this _____ day of _____ 2018, by a vote of _____ Ayes and _____ Nays.

Planning Commission Guide

Learn ways the city may create, change, or discontinue a city planning commission. Get information on appointment of members, commission powers and duties, and meeting rules. Understand council and planning commission roles in creating a comprehensive plan for growth and development, and how to implement it. Learn about ways to participate in joint or multijurisdictional planning.

RELEVANT LINKS:

[Minn. Stat. § 462.355.](#)
[Minn. Stat. § 473.175.](#)

[Minn. Stat. § 462.352, subd 3.](#)
[Minn. Stat. § 462.354, subd 1.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 410.12.](#)
See Handbook, *The Home Rule Charter City*.

I. Creation of a city planning commission

State law encourages all cities to prepare and implement a comprehensive municipal plan. In addition, cities within the seven-county metro area are required to adopt comprehensive plans. Under state law, the city planning commission or planning department is delegated the authority to create the city's comprehensive plan.

A comprehensive plan is an expression of the community's vision for future growth and development. It is also a strategic map to reach that vision. Comprehensive planning is an important tool for cities to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities.

The first step in creating a comprehensive plan is the creation of a city planning agency. A planning agency can be either a planning commission or a planning department with an advisory planning commission. Planning commissions are by and large the most prevalent form of planning agencies in Minnesota. This memorandum discusses the commission form of a planning agency in depth. In most instances, the laws related to planning commissions will apply to planning departments as well. However, cities interested in forming a planning department as their main planning agency, or who currently operate a planning department, should consult their city attorney for guidance.

The planning commission must be created by city ordinance or charter provision. When a planning commission is created by ordinance, a simple majority of councilmembers present is needed to adopt the ordinance. When a planning commission is created by charter, the statutory provisions for amending a charter must be followed. In drafting a planning commission ordinance or charter provision, a city will need to include provisions related to:

- Size or number of planning commission members.
- Terms of members.

RELEVANT LINKS:

[Establishing a Planning Commission, LMC Model Ordinance.](#)

- Organization and structure.
- Powers and duties.

A. Size or number of members

State statute does not specify how many commissioners a planning commission should have. As a result, the city ordinance should establish a reasonable number that reflects the needs of the city. An odd number is preferred to avoid tie-vote situations. Generally, cities appoint between five and nine individuals to serve as commission members.

Some considerations in choosing the number of commissioners include:

- Costs to the city in terms of salary (if a salary is paid).
- Availability of community members to serve or potential difficulty in recruiting members to serve full terms.

B. Terms of members

State statute does not set the length of terms for commission members, or impose limits on the number of successive terms that commission members may serve. As a result, city ordinance should establish the length of terms for commission members.

Some considerations in choosing the length of commission terms include:

- The substantial length of time necessary to conduct studies, draft, and adopt a comprehensive plan.
- The extensive body of knowledge that commission members must master to be effective planning commissioners.

These two considerations generally favor a longer, four-year term (rather than a two-year term), since rapid turnover of planning commissioners may hinder the city's efficiency in adopting, implementing, and enforcing its comprehensive plan.

Cities establishing a new planning commission for the first time, may wish to provide staggered terms initially. For example, one term may be for one year, another for two years, and another for three years, etc., with successors serving full four-year terms. Staggering terms in this manner will help ensure long-range continuity for the planning commission, and prevent a situation where all commission seats are vacant at once. This ensures that the planning commission is not without veteran members every four years.

Cities may establish consecutive term limits in their ordinance for commission members if desired. In addition, the city may wish to establish ordinance provisions for the removal of commission members, should it become necessary, in consultation with the city attorney.

RELEVANT LINKS:

See Section IV- *Planning Agency Meetings*.

See [Planning Commission Structure and Procedure](#), LMC Model Policy.

[Minn. Stat. § 462.354](#).
See Section III – *Powers and Duties of the Planning Commission*.

[Minn. Stat. § 462.354](#).

C. Organization and structure

The planning commission ordinance may establish an organizational form for the planning commission. For example, the ordinance may require a chairperson, acting chair, and secretary. In the alternative, the ordinance may enable the planning commission to suggest a policy (commonly known as bylaws), subject to council approval, that establishes a form of organization for its meetings. Placing organizational requirements in a policy adopted by council resolution, rather than in ordinance form, is generally preferred, because it provides a more flexible means to develop and amend policies.

D. Powers and duties

If the city creates a planning commission, state statutes prescribe several mandatory duties for the commission. The city ordinance should be drafted to include these duties. In addition, state statute permits some optional duties to be assigned to the planning commission in the council's discretion. City ordinance should make it clear which of these optional duties are assigned to the planning commission. Since state statute contains optional duties, general ordinance language stating that commission duties "shall be as established by state statute" may cause confusion over duties and should be avoided. The powers and duties of the planning commission are discussed more extensively below.

II. Appointment of city planning commission members

A. Council as a whole may serve as the planning commission

The city council may choose to designate itself as the city's planning commission by ordinance. However, most cities choose to establish a planning commission as a separate advisory body. This approach reduces the overall workload of the council, promotes citizen involvement, and allows commissioners to specialize in developing their body of knowledge concerning municipal planning.

B. Authority to appoint commissioners

State statute does not establish a process for the appointment of planning commissioners. As a result, the city ordinance or charter provisions should specify who has the authority to appoint commission members. Generally, appointing authority is vested in the city council as a whole.

RELEVANT LINKS:

In the alternative, cities may vest appointment power in the mayor exclusively, or may vest in the mayor the power to appoint commissioners, subject to council approval.

Some city charters may already contain provisions related to general appointments to city boards and commissions. In these cities, the charter provisions preempt local ordinance.

Cities also should consider adopting a policy for the recruitment and retention of commission members. The policy may be adopted as a resolution and need not be in ordinance form. Adopting the policy via resolution will allow more flexibility in developing and amending the ordinance. Although state law does not require the following, the policy may wish to include information regarding:

- The advertisement period for open positions.
- The submission of letters of interest and a statement of qualifications for board positions, or a city application form.
- An interview process prior to appointment.

C. Residency requirements

State statute does not require that planning commissioners reside within city limits. As a result, city ordinance should specify any residency requirements for serving on the planning commission. Frequently, cities limit eligibility for planning commission membership to city residents. Often, these cities feel that planning commissioners should live in the communities they plan for and create. Conversely, some cities may wish to allow non-residents to serve on planning commissions to increase the pool of eligible citizens. In addition, these cities may feel that property owners or business owners who do not reside within the city may still bring a valuable perspective to the planning commission.

D. Councilmembers and city staff serving on the planning commission

In cities where the council as a whole has decided not to serve as the planning commission, it may still be desirable for some councilmembers to sit on the planning commission or attend commission meetings. Cities may establish in their ordinance or planning commission policy various ways for councilmembers to serve on the planning commission.

1. Full voting members

Local ordinance or commission policy may provide that one or two city councilmembers will participate as full voting members of the planning commission on all decisions, and for discussion and quorum purposes.

See Section II-A, *Council as a Whole May Serve as the Planning Commission*.

RELEVANT LINKS:

See LMC information memo, [Official Conflict of Interest](#). Part IV *Conflict of Interest in Non-Contractual Situations*. 56 Am. Jur. 2d Municipal Corporations § 142.

[Lenz v. Coon Creek Watershed, Dist.](#), 278 Minn. 1, 153 NW 2d 209 (1967). [ETO, Inc. v. Town of Marion](#), 375 NW 2d 815 (Minn. 1985).

2. Non-voting members

Local ordinance or commission policy may provide that one or two city councilmembers will sit on the planning commission as non-voting members. Sometimes these members are called “council liaisons.” When city ordinance creates non-voting members, to avoid confusion, city ordinance or the commission policy should specify:

- Whether the councilmembers will count for quorum purposes.
- Whether the councilmembers may participate in discussion on matters before the commission.
- Whether the councilmembers may hold an office on the commission, such as chairperson, secretary, etc.

3. City staff on planning commission

City ordinance or commission policy may require that the city attorney, city engineer or city administrator/clerk serve as an ex-officio, voting member or non-voting of the planning commission. This, however, does not appear to be a common practice. More commonly, city staff may attend planning commission meetings as needed to provide the planning commission with necessary advice and information.

E. Compensation

City ordinance or commission policy may authorize compensation to planning commission members for their service, or, in the alternative, specify that commission members serve on a strictly non-compensated volunteer basis. Generally, when compensation is provided, it is for a nominal amount on an annual or per meeting basis.

F. Conflicts of interest

When appointing planning commissioners, cities should be aware that appointed officials are subject to the same concerns related to conflict of interest as city councilmembers. In the appointment process, the city council should attempt to discern if potential conflicts of interest exist.

Particularly, conflicts where it is obvious that the potential appointee’s own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

G. Removal of planning commission members

State statute does not dictate a process for removal of planning commission members before the expiration of their term.

RELEVANT LINKS:

Minn. Stat. § 462.351.
Minn. Stat. § 462.352, subd
5. Sample: [Bethel
Comprehensive Plan](#), City
Population 502.
Sample: [La Crescent
Comprehensive Plan](#),
Population 5,174.
Sample: [Minnetonka
Comprehensive Plan](#), City
Population 51,519.

Local ordinance or commission policy may outline such a process. The city should consult the city attorney before establishing criteria and a process for removal.

III. Powers and duties of the planning commission

State statutes vest the planning commission with certain mandatory duties. In addition, state statute allows the city council to prescribe additional duties in local ordinance. In most instances, unless noted in statute or ordinance, the planning commission serves in an advisory capacity.

A. Preparing and recommending a comprehensive plan

The primary duty of a newly created planning agency is advising the city council on the preparation and adoption of a comprehensive plan for the city.

1. Purpose of comprehensive planning

A comprehensive plan is an expression of the community's vision for the future and a strategic map to reach that vision. Comprehensive planning is not mandatory in cities outside the seven- county metropolitan area. However, comprehensive planning is an important tool for cities to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities. In addition, planning can help:

- Preserve important natural resources, agricultural, and other open lands.
- Create the opportunity for residents to participate in guiding a community's future.
- Identify issues, stay ahead of trends, and accommodate change.
- Ensure that growth makes the community better, not just bigger.
- Foster sustainable economic development.
- Provide an opportunity to consider future implications of today's decisions.
- Protect property rights and values.
- Enable other public and private agencies to plan their activities in harmony with the municipality's plans.

For many cities creating a comprehensive plan is the first step in adopting zoning and subdivision regulations for the city.

RELEVANT LINKS:

Minn. Stat. § 462.352, subd. 8.
Minn. Stat. § 462.352, subd. 7.
Minn. Stat. § 462.352, subd. 8.
Minn. Stat. § 462.352, subd. 9.

Minn. Stat. § 462.357, subd. 2.
Minn. Stat. § 462.352, subd. 6.
Minn. Stat. § 462.357, subd. 2 (c).

Minn. Stat. § 462.355, subd. 1.
Minn. Stat. § 462.355, subd. 2.

Minn. Stat. § 462.353, subd. 2.

As a result, the comprehensive plan normally lays out a vision for the city's future land development and land use, dictating where growth should occur, the type of growth that is allowed in various areas of the city, and the density of such growth. However, a comprehensive plan also may include a:

- Public or community facilities plan.
- Thoroughfare or transportation plan.
- Parks and open space plan.
- Capital improvement program.

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice for a couple of reasons. First, once a plan is adopted, it guides local officials in making their day-to-day decisions and becomes a factor in their decision-making process.

Second, preparing a comprehensive plan prior to the adoption of a zoning ordinance also affords the city additional legal protections if a particular ordinance provision is challenged in court. Zoning ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its zoning decisions. Usually the courts will not question the policies and programs contained in a comprehensive plan adopted by a local community, or question the ordinances based upon the plan, unless the particular zoning provision appears to be without any rational basis, or clearly exceeds the city's regulatory authority.

If a city is not able to develop a comprehensive plan prior to adopting a zoning ordinance, the zoning ordinance should be adopted in conjunction with extensive, written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

2. Preparing the comprehensive plan

State statute vests authority for preparing the comprehensive plan in the planning commission. However, the city council also may propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed.

The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan, or to a major geographical section of the municipality.

Cities are authorized to collect and analyze data; prepare maps, charts, tables, and other illustrations and displays; and conduct necessary studies when developing a comprehensive plan. Cities also may hire planning consultants and other experts to assist in drafting their plan.

RELEVANT LINKS:

Minn. Stat. § 462.353, subd. 3.

See LMC information memo, *Competitive Bidding Requirements in Cities*, American Institute of Certified Planners.

Minn. Stat. § 462.355, subd 1.

Minn. Stat. § 462.355, subd 1.

Minn. Stat. § 462.353, subd 2.

Minn. Stat. § 462.355, subd 2.

Minn. Stat. § 462.357, subd. 1h. Minn. Stat. § 462.355, subd. 1.

a. Consultants and public input

(1) Professional planners

Cities may hire planning consultants and other experts to assist in drafting their plan. Preparing a comprehensive plan is a large undertaking. While a planning commission can and should do most of the job, many communities have found they also need professional assistance from a professional planning consultant or a competent person on the staff of the city, county, regional development commission, or neighboring city.

Cities may solicit a planner through a request for proposal. While state law does not require planners to be licensed or certified, many cities prefer to hire planners with professional certification from the American Institute of Certified Planners (AICP). To be certified by the AICP, planners need to pass an exam and meet continuing education requirements.

(2) Other consultants

In drafting the plan, the planning commission must consult with other city departments and agencies (for example, the city's economic development authority).

In drafting a comprehensive plan, the planning commission must consider the planning activities of adjacent units of government and other affected public agencies.

The commissioner of natural resources must provide natural heritage data from the county biological survey, if available, to each city for use in the comprehensive plan.

b. Public input

Cities are required to hold at least one public hearing prior to adopting a comprehensive plan. However, most cities find it helpful to hold a series of public meetings to educate residents about the comprehensive plan, and to solicit citizen input. Some cities even develop extensive public relations campaigns to create excitement about and compliance with the city's comprehensive planning activities.

c. President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land

Non-metropolitan cities located in certain specified counties are subject to the President Theodore Roosevelt Memorial Act to Preserve Agricultural, Forest, Wildlife, and Open Space Land

RELEVANT LINKS:

[Minn. Stat. § 103G.005, subd. 10b.](#)

[Minn. Stat. § 103G.005 subd. 10b.](#)

[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.357.](#)

(hereinafter the “T. Roosevelt Memorial Preservation Act”) and should consult this law if they adopt or amend a comprehensive plan.

(1) Cities not subject to the T. Roosevelt Memorial Preservation Act

Cities in Aitkin, Beltrami, Carlton, Cass, Clearwater, Cook, Crow Wing, Hubbard, Isanti, Itasca, Kanabec, Koochiching, Lake, Lake of the Woods, Milles Lacs, Pine, St Louis and Wadena counties are not subject to the T. Roosevelt Memorial Preservation Act, because they are currently classified as “greater than 80 percent area” counties. A “greater than 80 percent area” means a county or watershed or, for purposes of wetland replacement, bank service area where 80 percent or more of the presettlement wetland acreage is intact and one of the following is true:

- Ten percent or more of the current total land area is wetland.
- Fifty percent or more of the current total land area is state or federal land.

In sum, these “80 percent area” counties still contain a significant portion of their presettlement wetland acreage. “Presettlement wetland” means a wetland or public waters wetland that existed in this state at the time of statehood in 1858.

(2) Cities subject to the T. Roosevelt Memorial Preservation Act

Cities outside the metro area, and not located in the counties listed above, must comply with the act. Even though these cities are not required to engage in comprehensive planning, if the city decides to do so, they must likely adopt certain findings of fact under the T. Roosevelt Memorial Preservation Act.

Specifically, when preparing or recommending amendments to the comprehensive plan, the planning commission in these cities must consider adopting goals and objectives that will protect open space and the environment again, probably as findings of fact.

In addition, within three years of adopting a comprehensive plan, the city must consider adopting ordinances as part of the city’s official controls that encourage the implementation of the goals and objectives of the T. Roosevelt Memorial Preservation Act. However, the city is not required to adopt any ordinances. Consideration of ordinance adoption could potentially be documented in findings of fact.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 473.858, subd. 2.](#)

[Minn. Stat. § 473.175.](#)

[Metropolitan Council.](#)

[City of Lake Elmo v. Metropolitan Council](#), 685 N.W.2d 1 (Minn. 2004).

[Minn. Stat. § 462.355, subd. 2.](#)
[See LMC information memo Newspaper Publication.](#)

[Minn. Stat. § 462.355, subd. 3.](#)

3. Recommending the comprehensive plan to council

Once a comprehensive plan is drafted, the planning commission may submit the plan (or a portion of the plan) with its recommendation for adoption to the city council. Upon receipt of the recommended plan, the council may accept the plan, reject the plan, or recommend revisions to the planning commission. In submitting the comprehensive plan to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection, or revision of the plan, and is not bound by planning commission's recommendations.

4. Adopting the comprehensive plan

a. Seven-county metro area plan review: adjacent units of government

Prior to plan adoption, cities within the seven-county metro area must submit their proposed comprehensive plans to adjacent governmental units and affected school districts for review and comment.

b. Seven-county metro area plan review: Metropolitan Council

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Council's regional system plans. When the Metropolitan Council determines that a city's comprehensive land use plan may have a substantial impact on or contain a substantial departure from the Metropolitan Council's regional system plans, the Council has the statutory authority to require the city to conform to the Council's system plans.

c. Public hearing requirements

Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality at least ten days before the day of the hearing.

d. Vote requirements

Unless otherwise provided in a city charter, the city council may, by resolution by a two-thirds vote of all its members, adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes.

RELEVANT LINKS:

See Section V: *Changing the Structure or Abolishing the Planning Commission*.

[Minn. Stat. § 462.356, subd 1.](#)

[Minn. Stat. § 462.356, subd 1.](#)

See LMC information memo, [Zoning Guide for Cities](#).

LMC information memo [Zoning Decisions](#).
See Handbook, [Comprehensive Planning, Land Use, and City-Owned Land](#).
LMC information memo, [Subdivision Guide for Cities](#).

[Minn. Stat. § 462.355, subd 1.](#)

[Minn. Stat. § 462.355, subd. 1a.](#)

[Minn. Stat. § 473.864, subd. 2.](#)

[Minn. Stat. 473.121, subd. 2.](#)

B. Implementing the plan

Once a comprehensive plan is adopted, the planning commission continues to exist (unless dissolved using statutory procedures). Once a plan is adopted, the main task of the planning commission is to study and propose to the city council a reasonable and practicable means for putting the plan or section of the plan into effect.

Reasonable and practicable means for putting the plan into action may include:

- Zoning regulations.
- Regulations for the subdivision of land.
- An official map.
- A program for coordination of the normal public improvements and services of the municipality.
- A program for urban renewal, and
- A capital improvement program.

In submitting recommendations for effectuation of the comprehensive plan to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the adoption of any land use ordinances or city programs.

C. Role in periodic review of the comprehensive plan

After a city has adopted a comprehensive plan, the planning commission is responsible for periodically reviewing the plan and recommending amendments whenever necessary.

Cities within the seven-county metropolitan area must review and update their plan, fiscal devices, and official controls at least every 10 years, and submit their revised plans to the Metropolitan Council for review. “Fiscal devices” means the valuation of property, the designation of urban and rural service districts, and the establishment of development districts and any other statutes authorizing the creation of districts in which the use of tax increment bonding is authorized. “Metropolitan area” or “area” means the area over which the Metropolitan Council has jurisdiction, including the counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington, but excluding the cities of Northfield, Cannon Falls, Hanover, Rockford, and New Prague.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 3.](#)

See Section III-A-4 *Adopting the Comprehensive Plan*.
[Minn. Stat. § 462.355, subd. 3.](#)

[Minn. Stat. § 473.175.](#)
[Metropolitan Council.](#)

[Minn. Stat. § 462.355, subd. 3.](#)

[Minn. Stat. § 462.356, subd. 2.](#)
[Lerner v. City of Minneapolis](#), 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 63-b-24 (Dec. 9, 1971). A.G. Op. 161-b, (Aug. 8, 1966).
See LMC information memo [Purchase and Sale of Real Property](#).

D. Role in amending the comprehensive plan

After a city has adopted a comprehensive plan, all future amendments to the plan must be referred to the planning commission for review and comment. No plan amendment may be acted upon by the city council until it has received the recommendation of the planning commission, or until 60 days have elapsed from the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation.

In submitting review and comment to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection or the revision of the plan, and is not bound by planning commission recommendations.

1. Procedure for amending a comprehensive plan

In amending a comprehensive plan, cities must follow the same procedure for adoption of a new plan. The planning commission must hold at least one public hearing on the amendment preceded by published notice.

Cities in the seven-county metro area must submit all amendments to their comprehensive plans to the Metropolitan Council for review.

Unless otherwise provided by charter, all amendments to the comprehensive plan must be approved by a two-thirds vote of all its members.

E. Role in purchase and sale of real property

After a comprehensive municipal plan or section of a plan has been recommended by the planning commission and a copy filed with the city council, the planning commission must be given a chance to review and comment on all proposed public acquisitions or disposal of real property within the city. This includes acquisitions or disposal by the city, but also:

- Any special district or agency in the city.
- Any other political subdivision (public schools or the county for example) having jurisdiction within the city.

This provision would appear to apply even when the comprehensive plan has not yet been adopted by council, so long as the planning commission has filed its recommended plan with the city.

After review, the planning commission must report in writing its findings to compliance of the proposed acquisition or to disposal of real estate with the comprehensive municipal plan.

RELEVANT LINKS:

Lerner v. City of Minneapolis, 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 161-b (Aug. 8, 1966).

Minn. Stat. § 462.356, subd. 2.

Minn. Stat. § 475.521, subd. 1 (b).

Minn. Stat. § 373.40, subd. 1(b).

The purpose of this requirement is to allow review of overall municipal development by the city planning commission, the authority charged with developing and reviewing the comprehensive land use plan for the municipality.

The planning commission has 45 days to report on the proposal, unless the city council designates a shorter or longer period for review. If the planning commission does not report within the required timeline, this statutory provision is considered waived by the commission.

In addition, a city council may by resolution adopted by two-thirds vote dispense with this requirement when in its judgment it finds that the proposed acquisition or disposal of real property has no relationship to the comprehensive municipal plan.

In submitting comments and review, the planning commission serves in a strictly advisory role. The city council ultimately decides on the purchase or disposal of real estate and is not bound by planning commission recommendations.

F. Role in capital improvements program

After a comprehensive municipal plan or section of a plan has been recommended by the planning commission and a copy filed with the city council, the planning commission must be given a chance to review and comment on all proposed public capital improvements within the city. This includes not only capital improvements built by the city, but also by:

- Any special district or agency in the city.
- Any other political subdivision having jurisdiction within the city.

The planning commission must report in writing to the city council, other special district or agency, or political subdivision concerned, its findings to compliance of the proposed capital improvement with the comprehensive municipal plan.

The term capital improvement is not defined within the comprehensive planning statute. Other laws governing issuing municipal bonds define “capital improvement” in part as acquisition or betterment of public lands, buildings or other improvements for a city hall, town hall, library, public safety facility, and public works facility. An improvement must have an expected useful life of five years or more to qualify. Capital improvement does not include light rail transit or any activity related to it, or a park, road, bridge, administrative building other than a city or town hall, or land for any of those facilities. For purposes of this section, “capital improvement” may include expenditures involving those for which bonds were or are issued.

RELEVANT LINKS:

Lerner v. City of Minneapolis, 284 Minn. 46, 169 N.W.2d 380 (Minn. 1969). A.G. Op. 161-b (Aug. 8, 1966).

Minn. Stat. § 462.357, subd 2.
Minn. Stat. § 462.352, subd 6.

Minn. Stat. § 462.357, subd 2 (c).
For more information see LMC information memo, *Zoning Decisions*.

Minn. Stat. § 462.357, subds. 1a, 1b.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1e.
Minn. Stat. § 462.357, subd. 1g.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 1.
Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 7.

Minn. Stat. § 462.357, subd. 7.
Minn. R. 9502.0315 to 9502.0445.
Minn. Stat. § 462.357, subd. 8.

The planning commission has 45 days to report on the proposal, unless the city council designates a shorter or longer period for review. If the planning commission does not report within the required timeline, this statutory provision is considered waived by the commission.

A city council may by resolution adopted by two-thirds vote dispense with this requirement when in its judgment it finds that the proposed capital improvement has no relationship to the comprehensive municipal plan.

In submitting comments and review, the planning commission serves in a strictly advisory role. The city council ultimately decides on capital improvements for the city and is not bound by planning commission recommendations.

G. Role in zoning ordinance adoption and amendment

1. Zoning ordinance adoption

The planning commission may, after adopting a comprehensive plan or a portion of a land use plan, prepare a proposed zoning ordinance (including a zoning map) and submit it to the city council with its recommendations for adoption. If a city adopts only a land use plan, the plan must provide guidelines for the timing and sequence of the adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the land use plan.

Note: The Municipal Planning Act has specific provisions related to local zoning of the following uses, which impact zoning ordinances:

- Manufactured home parks.
- Manufactured homes.
- Existing legal nonconformities at the time of zoning ordinance adoption.
- Feedlots.
- Earth sheltered construction, as defined by Minn. Stat. 216C.06.
- Relocated residential buildings.
- State licensed residential facilities or housing services registered under Minn. Stat. 144D and serving six or fewer persons in single family residential districts.
- Licensed day care facilities serving 12 or fewer persons in single family residential districts.
- Group family day care facilities licensed under Minnesota Rules to serve 14 or fewer children in single family residential districts.
- State licensed residential facilities serving 7-16 persons in multifamily residential districts.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 7.](#)

[Minn. Stat. § 462.3593.](#)
[Minn. Stat. § 462.357, subd. 6.](#)

[Northshor Experience, Inc. v. City of Duluth](#), MN, 442F.Supp.2d 713 (D. Minn. 2006). [Costley v. Caromin House, Inc.](#), 313 N.W.2d 21 (Minn. 1981). A.G. Op. 59-A-32 (Jan. 25, 2002).

[Minn. Stat. § 462.357, subd. 2.](#)

A.G. Op. 59-A-32 (Jan. 25, 2002).

[Minn. Stat. § 462.357, subd 3.](#)

LMC information memo,
[Newspaper Publication.](#)

See LMC information memo,
[Zoning Guide for Cities.](#)

[Minn. Stat. § 462.357, subd 4.](#)

For more information see
LMC information memo
[Zoning Decisions.](#)

See Section IV- B on the 60-
Day Rule.

- Licensed day care facilities serving 13-16 persons in multifamily residential districts.
- Temporary family health care dwellings.
- Solar energy systems.

Cities cannot adopt local ordinances that contradict the explicit provisions of state law as set out in the Municipal Planning Act on the uses listed above.

The city council may adopt a zoning ordinance by a majority vote of all its members.

In adopting an ordinance, one Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements in their city charter, because the Municipal Planning Act supersedes inconsistent charter provisions.

Prior to the adoption of a zoning ordinance, the city council or planning commission must hold a public hearing. Notice of the time, place, and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing. When an amendment involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated wholly or partly within 350 feet of the property to which the amendment relates.

The drafting and adoption of a city zoning ordinance is covered in detail in the LMC Information Memo, Zoning Guide for Cities.

2. Zoning ordinance amendment

An amendment to a zoning ordinance, including a rezoning, may be initiated by the governing body, the planning commission, or by petition of affected property owners as defined in the zoning ordinance. An amendment not initiated by the planning commission must be referred to the planning commission for study and report. The city council may not act on the proposed amendment (either by adopting or denying the amendment) until the planning commission has made its recommendations or 60 days have elapsed from the date of reference of the amendment without a report by the planning commission.

It is important to note that while state statute provides the planning commission 60 days to respond to proposals, the 60-Day Rule (an entirely different rule with 60 days in the title) still applies to ordinance amendments brought by application or petition of property owners.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd 3.](#)

[Minn. Stat. § 462.357, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 5.](#)

[Minn. Stat. § 462.3595.](#)

See LMC information memo, [Zoning Guide for Cities](#).

As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

In generating a report on a proposed zoning amendment, the planning commission serves in a strictly advisory role. The city council ultimately decides on the amendment for the city and is not bound by planning commission recommendations.

Prior to the adoption of a zoning ordinance amendment, a public hearing must be held. Under state statute, the city council or the planning commission may conduct the hearing.

Cities may adopt an ordinance or policy directing the planning commission to conduct these hearings when necessary.

The city council may adopt and amend a zoning ordinance by a majority vote of all its members. However, the adoption or amendment of any portion of a zoning ordinance which changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body.

3. Cities of the first class, additional duties for planning commissions

First class cities must follow very detailed procedures in state statute for zoning amendments that change residential zoning classifications to new commercial or industrial classifications. Planning commissions in cities of the first class must assist the city in these circumstances by conducting studies and developing reports. The adoption or amendment of any portion of a zoning ordinance that changes all or part of the existing classification of a zoning district from residential to either commercial or industrial requires a two-thirds majority vote of all members of the governing body. Charter cities of the first class may opt to follow a different procedure via a city charter provision.

H. Conditional use permits

Some city zoning ordinances provide that some uses within a zoning district will only be allowed upon the granting of a conditional use permit.

Conditional use permits are discussed in detail in the LMC Information Memo Zoning Guide for Cities. State statute allows city councils to delegate via ordinance their authority to review and approve conditional use permits to a planning commission or other designated authority.

Planning commissions charged with reviewing applications for conditional use permits must follow fairly strict legal standards for their review.

RELEVANT LINKS:

See LMC information memos
[Zoning Guide for Cities](#);
[Land Use Conditional Use
Permits](#).

[Minn. Stat. § 462.359, subd.
2.](#)
See Handbook, [City
Licensing](#).
[Minn. Stat. § 462.352, subd.
7, 8.](#)

See LMC information memo,
[Purchase and Sale of Real
Property](#).

Specifically, the city must follow the requirements of the zoning ordinance it has adopted.

If a conditional use permit application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial should all relate to the applicant's failure to meet standards established in the ordinance. The standard of review for conditional use permits is discussed in depth in the LMC Information Memo *Zoning Guide for Cities*.

I. Role in adoption of an official map for a major thoroughfare plan and a community facilities plan

After the planning commission has adopted a comprehensive plan containing a major thoroughfare plan and a community facilities plan or simply these portions of their comprehensive plan, it may adopt an official map. The official map is not the zoning map required for adoption of a zoning ordinance.

In addition, it is not the map adopted as part of the comprehensive planning process. Instead, the official map is a unique map designed to help carry out the policies of the major thoroughfare plan and community facilities plan. The official map can cover the entire city or any portion of the city.

The purpose of an official map is to identify land needed for future public uses, such as streets, aviation purposes or other necessary public facilities, such as libraries, city halls, parks, etc. Identification on an official map of land needed for future public uses permits both the public and private property owners to adjust their building plans equitably and conveniently before investments are made that will make adjustments difficult to accomplish.

Official maps do not give a city any right to acquire the areas reserved on the map without just compensation by the city. When the city is ready to proceed with the opening of a mapped street, the widening and extension of existing mapped streets, or the use of lands for aviation purposes, it still must acquire the property by gift, purchase, or condemnation. It need not, however, pay for any building or other improvement erected on the land without a permit or in violation of the conditions of the permit.

Following the adoption and filing of an official map, building permits issued under the Minnesota State Building Code are subject to the provisions set forth in the city's official map. This puts landowners on notice of possible future uses and allows construction to occur within the constraints of the planning.

RELEVANT LINKS:

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 6 \(1\).](#)

[Minn. Stat. § 462.357, subd. 6 \(2\).](#)
[Minn. Stat. § 462.359, subd. 4.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.354, subd. 2.](#)

This way landowners can avoid costly expenditures on developments, for example, that sit in a location planned for future public uses. As a result, any building built without obtaining a building permit or in violation of permit conditions, loses the statutory protection for just compensation, and a municipality need not pay a landowner for a building that needs to be destroyed if a street is widened. In other words, while the official map does not give the city a fee interest in land initially, it does authorize the municipality to acquire such interests in the future without having to pay compensation for buildings that are erected in violation of the official map.

J. Board of zoning adjustment and appeals

A city that has adopted a zoning ordinance or official map should provide for a Board of Zoning Adjustment and Appeals (BZA). By ordinance, a city may delegate the role of a BZA to the city planning commission or a committee of the planning commission. The duties of a BZA include:

- To hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative officer in the enforcement of the zoning ordinance.
- To hear requests for variances from a city zoning ordinance.
- To hear and decide appeals when a land use, zoning permit or approval for a building is denied based upon the city's official map.
- Such other duties as the city council may direct.

In any city where the council does not serve as the BZA, the city council may, except as otherwise provided by charter, provide by ordinance that the decisions of the BZA on matters within its jurisdiction are:

- Final, subject only to judicial review; or
- Final, subject to appeal to the council and the right of later judicial review; or
- Advisory to the council.

The ordinance creating the BZA should specify at minimum:

- The time and manner by which hearings by the BZA shall be held, including provisions related to notice to interested parties.
- Rules for the conduct of proceedings before the BZA, including provisions for the giving of oaths to witnesses and the filing of written briefs by the parties.

In cities where the planning commission does not act as the BZA, the BZA may not make a decision on an appeal or petition until the planning commission, or a representative authorized by it, has had reasonable opportunity, not to exceed 60 days, to review and report to the BZA about the appeal or petition.

RELEVANT LINKS:

See information memos, [Zoning Guide for Cities](#) and [Land Use Variances](#).

[Minn. Stat. § 462.358, subd. 3\(b\)](#).

See Handbook, [City Licensing](#). See also LMC information memo, [Subdivision Guide for Cities](#).

See the LMC information memo, [Meetings of City Councils](#).

[Minn. Stat. § 13D.01](#).

It is important to note that while state statute provides the planning commission 60 days to respond to appeals or petitions, the 60-Day Rule (an entirely different rule with 60 days in the title) may still apply to some matters brought before the BZA (for example, requests for variances) by application or petition of property owners. As a result, internal procedures should be developed to coordinate planning commission review that does not violate the 60-Day Rule automatic approval statute.

Planning commissions charged with reviewing applications for variances must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the state statute related to whether enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” The standards for review in granting variances are discussed in depth in the LMC Information Memo [Zoning Guide for Cities](#).

K. Role in review of subdivision applications

Absent a charter provision to the contrary, in cities that have adopted a subdivision ordinance, the city council may by ordinance delegate the authority to review subdivision proposals to the planning commission. However, final approval or disapproval of a subdivision application must be the decision of the city council.

Planning commissions charged with reviewing subdivision applications must follow fairly strict legal standards for their review. Specifically, the city must follow the requirements of the subdivision ordinance it has adopted. If a subdivision application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant’s failure to meet standards established in the ordinance. The standard of review for subdivision applications is discussed in depth in an LMC information memo on subdivisions, plats and development agreements.

IV. Planning commission meetings

Planning commission meetings are governed by the same statutes as regular city council meetings. For example, planning commission meetings are subject to the Open Meeting Law and subject to the records retention laws.

A. Open Meeting Law

The Minnesota Open Meeting Law generally requires that all meetings of public bodies be open to the public. This presumption of openness serves three basic purposes:

RELEVANT LINKS:

[Rupp v. Mayasich](#), 533 N.W.2d 893 (Minn. Ct. App. 1995).

[Minn. Stat. § 13D.01, subd. 1.](#)

[Minn. Stat. § 13D.01, subd. 6.](#)

LMC information memo
[Meetings of City Councils.](#)

For more information on the 60-Day Rule see the LMC information memo, [Zoning Guide for Cities](#) Section V-A, The 60-Day Rule.

[Minn. Stat. § 15.99.](#)
[Manco of Fairmont v. Town Bd. of Rock Dell Township](#), 583 N.W.2d 293 (Minn. Ct. App. 1998) cf. [American Tower, L.P. v. City of Grant](#), 636 N.W.2d 309 (Minn. 2001). [Hans Hagen Homes, Inc. v. City of Minnetrista](#), 728 N.W.2d 536 (Minn. 2007) distinguished by [Johnson v. Cook Cty.](#), 786 N.W.2d 291 (Minn. 2010).

See LMC information memo, [Zoning Guide for Cities](#), Section V-A, The 60-Day Rule.

- To prohibit actions from being taken at a secret meeting where it is impossible for the interested public to become fully informed concerning decisions of public bodies or to detect improper influences.
- To ensure the public's right to be informed.
- To afford the public an opportunity to present its views to the public body.

The Open Meeting Law applies to all governing bodies of any school district, unorganized territory, county, city, town or other public body, and to any committee, sub-committee, board, department or commission of a public body. Thus, the law applies to meetings of all city planning commissions and any city or commission advisory boards or committees.

At least one copy of the materials made available to the planning commission at or before the meeting must also be made available for inspection by the public. However, this does not apply to not-public data or materials relating to the agenda items of a closed meeting.

The Open Meeting Law also contains some specific notice and record-keeping requirements which are discussed in detail in the LMC Information Memo Meetings of City Councils.

B. The 60-Day Rule

Cities generally have only 60 days to approve or deny a written request relating to zoning, including rezoning requests, conditional use permits and variances. This requirement is known as the "60-Day Rule."

The 60-Day Rule is a state law that requires cities to approve or deny a written request relating to zoning within 60 days or it is deemed approved. The underlying purpose of the rule is to keep governmental agencies from taking too long in deciding land use issues. Minnesota courts have generally demanded strict compliance with the rule.

All planning commission review of zoning related applications must be completed in a manner that allows the city to complete its entire approval process within the timeframe dictated by the 60-Day Rule. Local ordinance should not establish timeframes for planning commission review of applications or appeal of commission decisions that do not allow the city to comply with the 60-Day Rule.

RELEVANT LINKS:

See [Planning Commission Structure and Procedure](#), LMC Model Policy.

See LMC information memo, [Meetings of City Councils](#).

See LMC information memo, [Zoning Guide for Cities](#), Section V-C-2-b on conducting a public hearing

See Handbook, [Records Management](#).
[Minn. Stat. § 15.17, subds. 1, 2.](#)

See LMC information memo, [Meetings of City Councils](#) for more information on minutes.

See LMC information memo, [Zoning Guide for Cities](#), Section V-C-2 on making a record of the basis for zoning decisions.

C. Commission policies on order and meeting structure

City ordinance may provide for the adoption, subject to the city council's approval, of planning commission policies related to meeting rules of order and procedure (sometimes referred to as bylaws). Such policies should be adopted by resolution, not ordinance. A policy setting forth rules of procedure can help the planning commission run its meetings, prepare agendas, call special meetings and handle public comment appropriately. Because planning commissions often conduct public hearings, the policy should prescribe a procedure for conducting orderly public hearings.

The policy should establish procedures related to:

- Meeting time and place, including provisions for calling special meetings.
- Quorum requirements.
- Voting and making official recommendations.
- Order of proceedings for both regular meetings and public hearings.
- Creating, ordering and submitting items to an official agenda.
- Minute taking and record keeping requirements.
- Appointment and duties of officers, such as chairperson.
- Filling vacancies.
- Creation of management of subcommittees.

D. Minutes and official records

Cities, including city planning commissions, are required by law to create an accurate record of their activities. In addition, cities, including city planning commissions, must retain government records in accordance with the records retention laws.

1. Minutes and records

State law requires all officers and agencies of the state, including planning commissions in statutory and home-rule charter cities, to make and preserve all records necessary for a full and accurate knowledge of their official activities. These records include books, papers, letters, contracts, documents, maps, plans and other items. State statutes do not explicitly require planning commissions to take minutes of their meetings, but such minutes may be necessary to make a full and accurate record of the commission's proceedings.

Minutes are further recommended because the actions of planning commissions and land use decisions, in general, are frequently subject to court review.

RELEVANT LINKS:

LMC information memo
*Taking the Mystery out of
Findings of Fact.*

LMC information memos:
*Taking the Mystery out of
Findings of Fact; Zoning
Decisions.*

Minn. Stat. § 15.17.
Minn. Stat. § 138.225.
Minn. Stat. §§ 138.161-.21.

When a city land use decision is reviewed by a court of law, the court requires cities to document the basis for their land use decisions in written, contemporaneous findings of fact.

Planning commission bylaws or city policy should set the requirements for meeting minute approval and content. For example, a policy may require the minutes to reflect all motions and resolutions and votes taken by the commission. Planning commission policy also may assign responsibility for minute taking to the commission secretary or to a city staff member.

2. Findings of fact

In addition to minutes, whenever the planning commission makes an official recommendation related to a matter referred to it by council or on a land use application submitted to the city (for example, a conditional use permit, zoning amendment, variance or subdivision application), it should create written findings of fact supporting the recommendation. Findings of fact from the planning commission serve three important roles:

- They articulate to the city council the planning commission's recommendations on issues before the commission, including its basis for making its recommendations.
- They communicate to a land use applicant the commission's approval of a project or identify for the applicant disapproval and the reasons for such disapproval.
- They support the city's ultimate decision on the issue should the city's decision be challenged in court.

In land use cases, Minnesota courts are looking for a sufficient statement of the reasons given by the city to grant or deny an application request. The role of the court is to examine the city's reasons and ascertain whether the record before the city council supports them. The reasons given by the city must be legally sufficient and have a factual basis.

Minnesota case law and statutory law demand that the reasons for a city's decision on a land use case be articulated in the official record. Written findings of fact, or "reasons," and conclusions of law are required whenever an application is denied. In addition, written findings of fact and conclusions of law are strongly recommended whenever a decision or recommendation related to a land use decision is made. Findings of fact and creating accurate records are discussed at length in the LMC Information Memo "Zoning Guide for Cities."

3. Records retention requirements

State law limits the ability of cities, including city planning commissions, to dispose of or destroy city records.

RELEVANT LINKS:

A.G. Op. 851F (Feb. 5, 1973). See Handbook, *Records Management*.

See LMC information memos, *Taking the Mystery out of Findings of Fact*; Land Use Findings of Fact: Elected Officials as Policy makers and *Zoning Decisions*.

Minn. Stat. § 462.354, subd. 1.

Minn. Stat. § 410.12.
See Handbook, *The Home Rule Charter City*.

Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 462.356, subd. 2.

Minn. Stat. § 462.357, subd. 4.

Minn. Stat. 412.191, subd. 4.

Minn. Stat. § 410.12.

Cities must retain records that they receive or create according to a records retention schedule. It is a crime to destroy such records without statutory authority.

Maintaining adequate records is also vital for defending the city's land use decisions in a court of law.

V. Changing the structure or abolishing the planning commission

A. Abolishing the planning commission

State statute provides that planning commissions created by city ordinance may be abolished by two-thirds vote of all the members of the governing body. Planning commissions created by city charter can be abolished by following the statutory provisions for amending a city charter.

Cities considering abolishing their planning commission should seek the advice of their city attorney. While state statute allows cities to abolish their planning commission, state statute also vests planning commissions with mandatory duties related to:

- Reviewing amendments to the comprehensive plan.
- Reviewing purchase and sale of public property and capital improvement projects.
- Reviewing zoning ordinance amendments.

Because state statute vests planning commissions with these mandatory duties, it is unclear how a city that has abolished its planning commission would proceed under state statute with necessary amendments to official controls, purchase and sale of property and capital improvements.

B. Modifying the planning agency

Planning commissions created by city ordinance may be modified by an ordinance amendment (for example, to change from a five- to seven-member commission). For statutory cities, the ordinance must be approved by a majority of all members of the city council. Consult the city charter to modify planning commissions created by city charter.

RELEVANT LINKS:

[Minn. Stat. § 462.3535, subd. 1, 2.](#)

[Minn. Stat. § 462.3535, subd. 4.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.3585.](#)

VI. Joint or multijurisdictional planning

State statutes create multiple means for cities to collaborate with other governmental bodies, including other cities, counties and towns, on comprehensive land use planning.

A. Community-Based planning

Cities are encouraged, but not required, to prepare and implement a community-based comprehensive municipal plan. This language is very similar to comprehensive planning as discussed above but is not the same. Community-based comprehensive municipal plans contain an element of orderly annexation and/or boundary adjustment planning along with traditional land use and community planning.

In cities that opt for community-based comprehensive municipal plans, the city must coordinate its plan with the plans, if any, of the county and the city's neighbors. Cooperation is designed to:

- Prevent the plan from having an adverse impact on other jurisdictions.
- Complement the plans of other jurisdictions.

In cities that opt for community-based comprehensive municipal plans, the city must prepare its plan to be incorporated into the county's community-based comprehensive plan, if the county is preparing or has prepared one, and must otherwise assist and cooperate with the county in its community-based planning.

Community-based comprehensive municipal plans do not appear to be common. Cities interested in this option should consult their city attorney or a planning consultant.

B. Joint planning boards for unincorporated territory within two miles of the city limits

If a city has already opted to extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits before the creation of a joint board, those subdivision regulations will apply until the joint board adopts subdivision regulations.

If a city has unincorporated area within two miles of the corporate limits of a city, a joint planning board may be formed. A city council or a county board or a town board may require the establishment of a joint planning board on their own initiative by passing a resolution requiring a board to be established. The resolution, once passed, must be filed with the county auditor.

RELEVANT LINKS:

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.354, subd. 2.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.355.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.355, subd. 4.](#)

[LMC information memo](#)
[Zoning Guide for Cities.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.357.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.358.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.359.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.3595.](#)

[Minn. Stat. § 462.3585.](#)
[Minn. Stat. § 462.362.](#)

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.371.](#)
See Handbook,
[Intergovernmental Cooperation.](#)
See LMC information memo
[LMCIT Liability Coverage Guide.](#)

[Minn. Stat. § 462.372.](#)

The city, county and town must agree on the number of board members for the joint board. However, each participating governmental unit must have an equal number of members. The members must be appointed from the governing bodies of the city, county and town.

Once established, the board is authorized to:

- Serve as the governing body and board of appeals and adjustments within the two-mile area.
- Create a planning agency.
- Create a BZA.
- Adopt a comprehensive plan.
- Adopt interim ordinances. Note that the law on interim ordinances for certain uses is specific and varied. Best practice suggests consultation with the city attorney before adopting interim ordinances.
- Adopt zoning ordinances.
- Adopt subdivision regulations.
- Adopt an official map.
- Provide for and issue conditional use permits.
- Enforce official controls and prescribe penalties for violations.
- Adopt and enforce the State Fire Code.

The city must provide staff for the preparation and administration of land use controls unless otherwise agreed by the governmental units composing the board.

C. Regional planning boards

Any two or more counties, cities or towns may enter into a joint powers agreement to conduct regional planning activities. The participating entities do not need to be contiguous.

The joint powers agreement creating a regional planning agency should:

RELEVANT LINKS:

[Minn. Stat. § 462.373, subd. 1.](#)

[Minn. Stat. § 462.373, subd. 2.](#)

[Minn. Stat. § 462.374.](#)

[Minn. Stat. § 462.375.](#)

[Minn. Stat. § 462.383.](#)

[Minn. Stat. § 462.385.](#)

[Northwest Development Commission.](#)

[Headwaters Regional Development Commission.](#)

[Arrowhead Regional Development Commission.](#)

[West Central Initiative.](#)

- Establish a board composed of members selected from the governing bodies of the participating governmental units.
- Set the number of board members.
- Establish terms of office for board members.
- Establish a method for member appointment and removal.
- Create a framework for adoption of a regional plan, and provide timelines for review and comment on the plan by participating governmental units.
- Create a framework for review of participating governmental unit comprehensive plans and a timeline for comment on such plans by the regional board.

The regional planning board may hire a planning director and staff, including consultants, and appoint an advisory planning commission.

The regional planning board may prepare a plan for the development of the region. However, the plan may not be adopted by the regional planning board until it has been referred to the governing bodies of all participating units for their review and their recommendation.

Once the plan has been prepared, participating governmental units within the region may adopt all or any portion of the regional development plan.

When a regional plan is adopted, the regional planning agency must send a copy of the plan and any future revisions to the commissioner of employment and economic development, to the governing bodies of cooperating governmental units, and to the planning agencies in contiguous areas.

D. Regional development commissions and comprehensive planning activities

Regional development commissions are separate entities from regional development boards discussed above. Regional development commissions are created by state statute to provide a means of pooling the resources of local governments to approach common problems related to urban and rural growth and development.

Development regions are set by state statute and are numbered as follows:

Region 1: Kittson, Roseau, Marshall, Pennington, Red Lake, Polk, and Norman.

Region 2: Lake of the Woods, Beltrami, Mahnomen, Clearwater, and Hubbard.

Region 3: Koochiching, Itasca, St. Louis, Lake, Cook, Aitkin, and Carlton.

Region 4: Clay, Becker, Wilkin, Otter Tail, Grant, Douglas, Traverse, Stevens, and Pope.

RELEVANT LINKS:

[Region Five Development Commission.](#)

[Mid-Minnesota Development Commission.](#)

[Upper Minnesota Valley Regional Development Commission.](#)

[East Central Regional Development Commission.](#)

[Southwest Regional Development Commission.](#)

[Region Nine Development Commission.](#)

[Metropolitan Council.](#)

[Minn. Stat. § 462.39, subds. 4, 5.](#)

[Minn. Stat. § 462.391, subd. 1a.](#)

[LMCIT Land Use Resources.](#)

[Government Training Services. American Planning Association.](#)

Region 5: Cass, Wadena, Crow Wing, Todd, and Morrison.

Region 6E: Kandiyohi, Meeker, Renville, and McLeod.

Region 6W: Big Stone, Swift, Chippewa, Lac qui Parle, and Yellow Medicine.

Region 7E: Mille Lacs, Kanabec, Pine, Isanti, and Chisago.

Region 8: Lincoln, Lyon, Redwood, Pipestone, Murray, Cottonwood, Rock, Nobles, and Jackson.

Region 9: Sibley, Nicollet, LeSueur, Brown, Blue Earth, Waseca, Watonwan, Martin, and Faribault.

Region 10: Rice, Goodhue, Wabasha, Steele, Dodge, Olmsted, Winona, Freeborn, Mower, Fillmore, and Houston.

Region 11: Anoka, Hennepin, Ramsey, Washington, Carver, Scott, and Dakota.

The creation of a regional development commission does not affect the rights of counties or cities to conduct their own planning activities. Instead, regional development commissions are designed to support planning for cities. Cities may request that a regional commission review, comment, and provide advisory recommendations on local plans or development proposals.

VII. Training and resources for planning commission members

Planning commission members perform a vital role for their community. Training materials and seminars can increase the effectiveness of city planning commissioners and are essential for protecting the city's legal interests.

The League of Minnesota Cities Insurance Trust has a Land Use Loss Control Program to assist members through phone consultations and online training. In addition, the Land Use Loss Control Program has extensive written materials available at no cost to members.

Additional training and materials may also be obtained from private vendors such as:

- Government Training Services (GTS).
- The American Planning Association.

Being a Planning Commissioner

by Steven R. Burt

They jump into the middle of their neighbors' business, staying up late at night to attend meetings, attempting to play Solomon. If they had any sense, they'd be at home playing cards. Around the neighborhood they may be considered opinionated, nosy, busybodies, or "butt-in-skis." But around City Hall they're accorded the title of "planning commissioner." Whether it's an honor or a burden depends on what you're able to make of it.

Allow me to share with you ten lessons learned from nine years' service on a local planning and zoning commission — lessons that might help make being a planning commissioner more of an honor, and less of a burden.

1. Your Obligation to Contribute.

Recognize that you have an obligation to contribute to your planning and zoning meeting, even if you don't have a set of initials following your name and can't name the planner who laid out the streets of Paris. It's not a "chance" to contribute; it's an "obligation" by virtue of your appointment. Study any staff reports, maps, and the like, and come prepared to contribute. If you can't muster the interest to have an opinion, get off the commission. Planning commissions are places for people who care and want to make a difference to their communities. They're not the place for fence-straddlers who are unable to make up their mind.

2. Figure Out Why You're There.

I don't mean you personally, but the commission as a whole. Are you making a recommendation to a city council? Are you making a final decision? What are the limits to your authority?

Understand your role in the planning process and who are you responsible to. The mayor or council who appointed you? Your neighbors? The general plan? It's like suddenly coming on stage in the middle of

a play and being asked to act out a role: if you don't know your part, and how it fits in with everyone else's, you'll be an embarrassed failure.

PLANNING COMMISSIONS
ARE PLACES FOR PEOPLE
WHO CARE AND WANT TO
MAKE A DIFFERENCE TO
THEIR COMMUNITIES.

Planning commissions serve a valuable function by taking land-use conflicts out of the political arena (in theory, anyway) and into that sane, level-headed sphere governed by "rules of good planning." Make no mistake, every issue that comes before you will involve some kind of land-use conflict, and in spite of the theory some will be politically supercharged. See through it.

3. Identify Interests. Learn the difference between personal interest, special interest, private interest, and public interest. Everyone with any interest in a decision has a personal interest of some type. As a planning commissioner, however, you have to be wary of also having a conflict of interest. If you stand to gain financially, or in some way apart from the manner in which the community will benefit from your decision, ask yourself some hard questions. Better that you ask them, than someone else.

Special interests are easy to identify. They're usually well-financed, well-organized, and have a narrow focus, wielding influence far out of proportion to their standing. Recognize them for what they are. Private interests will be what most people bring to the commission meeting, while public interest will be that rare quality that you'll see in yourself and almost no one else! Try to develop some perspective

on this. Every issue will likely come down to competing interests; learn to recognize and balance them fairly.

4. Ask the Right Questions. Learn to ask the right questions of applicants, staff, and the public — and don't assume the unstated. If you ask the wrong kinds of questions the answers will be meaningless. For example, it may be "logical" that a developer would only propose development on safe, stable soil. It seems "logical" that he wouldn't want to risk future problems with development on soil of unknown or unstable characteristics. He may even profess to "value" safe, well-engineered projects. Everyone values safety, surely. But neither issue of "logic" or "value" has anything to do with the reality of whether the soil is stable or not. Don't take things for granted. Ask the right questions, and make sure of the fact that the soils are indeed stable.

5. Ask the Hard Questions. My favorite is, "Is this just your idea, or do you have any evidence to back it up?" No category of comment is more common at a zoning hearing than unsubstantiated "fact." Comments like, "It will decrease my property values," or "The traffic impacts will hardly be noticeable" will plague you all your days. Sift through the testimony for relevant planning information corroborated by evidence. Keep in mind that aside from expert witnesses, and without evidence, one person's opinion is just about as valid as another's. Be fair, but be discriminating in what you choose to accept as truth.

6. Have a Method for Evaluating What You Hear and See. Not everything can be reduced to a mathematical formula, or correspond to a diagram in a book. Your zoning code will only be a guideline. Its application and interpretation is your job. If evidence is in conflict or inconclusive, use the principle of "Ockham's Razor": the simplest explanation is probably the truth.

<i>Desirable but Unnecessary</i>	<i>Desirable and Necessary</i>
<i>Undesirable and Unnecessary</i>	<i>Undesirable but Necessary</i>

Clarify issues with some kind of thought organizing system. I've mentally drawn the Quadrant Diagram above in my mind hundreds of times.

Issues that end up as Desirable and Necessary for the community, or Undesirable and Unnecessary are no-brainers. The really tough decisions are found in the other two quadrants — especially the Undesirable but Necessary.

7. You Are What You Eat. Learn what not to eat prior to a meeting (do I have to say it?) and then don't eat it. Don't chew gum in the microphone. Don't apply cosmetics, lipstick, or lotion during the meeting. Remember that actions sometimes speak louder than words. Make a personal list of things not to do with your nose or other body parts during the meeting. Use discretion in determining when it's appropriate to laugh, eat, or feign sleep. Above all, keep in mind that the meetings you participate in might be the only time a good percentage of the public will ever encounter their local government. Be patient, and act professional. Then make your decisions and votes with a firm, sure sound. No whimpering out.

8. Making Motions. Learn to form a coherent motion. Write it out in advance if you have to. Be aware that the motion maker has a decided advantage in influencing the outcome of a vote. Often, if there is indecision on the part of one or more commissioners, the person making a clear, strong motion will carry votes to his or her position. If there are two sides forming up in discussion, don't be caught unprepared to make a motion to support what you believe. And if you do make the motion, frame it clearly. Speak up and make the motion with conviction.

9. No Excuses, Please. Don't feel

obligated to justify your votes or respond to criticism in a meeting. Nothing (with the possible exception of arguing with someone in the audience) can undermine your authority more than the appearance of making an excuse for a decision. That doesn't mean that you cannot or should not explain what is going on in the meeting; usually the public doesn't understand the process or your role in it. Take time, if necessary, to briefly explain to everyone what is occurring and what the basis of your decision will be. As a body you have the responsibility to make a decision. Then, after due consideration, make it your decision and move on. You don't need to convert anyone to agree with you. Take control of the meeting and keep it.

10. Don't Apologize for Being a Planning Commissioner. Sometimes developers or citizens may make you feel uncomfortable for even being in a position to render a decision. Don't fall into that trap! Acting properly, planning and zoning commissions perform a valuable service to the community as a whole. Since most communities make substantial investments in plans, parks, roads, sewer systems, and so on, they have every right to exert reasonable control, through planning and zoning, over how private development affects the community's built environment and whether development conforms to the adopted master plan and ordinances.

SUMMING UP:

So there it is — ten tips gleaned from nine years. It's not all that much, and it's not complex. Yet there is nothing easy about being a planning commissioner — not the time commitment, not the study and deliberation, and not the uncomfortable position of never being able to satisfy

everyone. It's an easier place to lose friends than to make them, and for every successful moment there are hours of frustration. Honor or burden — you decide.

But once you've sat in the position, your perception of the place you live will never be the same. It will be your city, your county, or your town in a way it never was before. Hopefully, it will bear the mark of your care, your concern, and, from time to time, even your courage.

I wish I could tell you that if you follow these tips you'll make no mistakes. But I can't. And I wish I could tell you that your hard work will all pay back someday and that the issues you've helped decide will make life better for everyone. But I can't.

What I *can* tell you is this: You didn't take the job for what you could get out of it. You took it for what you felt you could give. Focus on that. Work at it. Live with it. Then you'll likely find serving as a commissioner an honor, not a burden. ♦

Steven R. Burt, AIA, served on the Planning and Zoning Commission for Sandy City, a suburb of Salt Lake City, Utah, for nine years. He was a recipient, in 1990, of the Utah Chapter APA "Outstanding Achievement Award for Urban Design." He is a licensed architect and travels extensively throughout Asia and Europe as Vice President of Field Operations for Daw Technologies, Inc., providing Design/Build cleanrooms systems to the microelectronics industry. An earlier version of this article appeared in the *Utah Planner*.



[Editor's Note: For other perspectives on serving as a planning commissioner or zoning board member, see: Douglas Hageman's "Lessons from Nine Years on a Zoning Board," in PCJ #3; Fred Riggins' "The 'Riggins Rules' .." in PCJ #13; "Planning Commissioners Roundtable Discussion" in PCJ #18; and Carolyn Braun's "Planning From Different Perspectives," on page 8 of this issue.]

American Planning Association
Minnesota Chapter



Citizen Planner Handbook

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Thanks to the City of Golden Valley for
providing the cover photo



American Planning Association
Minnesota Chapter
Making Great Communities Happen

A Letter from the President

Dear Citizen Planners,

The American Planning Association of Minnesota (APA MN) represents a vast range of planning professionals involved in planning-related activities on behalf of state and regional agencies, counties, cities, towns, educational institutions, and the private sector. Our leadership as a professional institution captures more than just the professional planner. We recognize that planning enables civic leaders and citizens who are committed to creating communities that enrich people's lives. Our membership represents a growing number of citizen planners who we are proud to support.

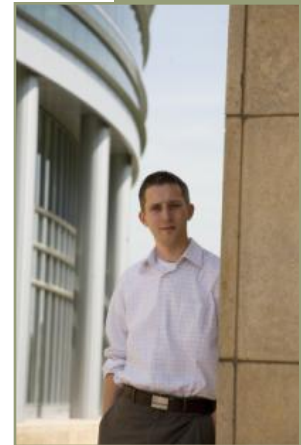
APA MN provides assistance to planning commissioners, elected officials and engaged citizens with training, information and support. We have developed a number of tools to assure excellence in the decision making process. The Citizen Planner Manual is one of those tools. It is designed to give the citizen planner a foundation in civic planning and the resources needed to make sound planning decisions. The manual may not address all of the challenges you will face as a citizen planner, but it will serve as a building block to your training as you become more engaged in the planning process.

On behalf of APA MN, we want to thank you for your commitment to the organization and more importantly, your community. We hope you will consider APA MN as a resource. APA MN offers a variety of workshops and training sessions during our state and national conferences, and a national clearinghouse of training material.

Sincerely,

Lance H. Bernard

APA MN President



Please Note: The handbook was first established by the Minnesota Planning Association (MPA) in the early 90's. It was published and copy written in 2000. In 2006, MPA dissolved and merged with APA MN. Since that time, the handbook has been overseen and updated by APA MN. Revisions to the handbook have been made by certified planners and volunteers dedicated to their profession.

1 An Introduction to Planning

This chapter will address the following topics:

- What is Planning?
- Why We Plan
- The Planning Process/Concept
- Authority to Plan
- References

What Is Planning?

Webster's Dictionary defines planning as "the act of making or carrying out plans; the establishment of goals, policies, and procedures for a social or economic unit." Community planning is often described as an ongoing attempt to guide future development and redevelopment of a neighborhood, city, town, county, or region in order to promote the public health, safety, and welfare.

The American Planning Association offers the following definition:

Planning, also called urban planning or city and regional planning, is a dynamic profession that works to improve the welfare of people and their communities by creating more convenient, equitable, healthful, efficient, and attractive places for present and future generations.

Planning enables civic leaders, businesses, and citizens to play a meaningful role in creating communities that enrich people's lives.

Good planning helps create communities that offer better choices for where and how people live. Planning helps communities to envision their future. It helps them to find the right balance of new development and essential services, environmental protection, and innovative change.

Why Do We Plan?

Communities plan in an attempt to manage change. Change occurs in all communities, regardless of size and location. Change can mean population growth or decline or changing demographics. Change can mean growing residential areas, commercial and industrial development, increased traffic, etc. It can also take the form of deteriorating neighborhoods, decline of downtowns, and loss

of employment. Sometimes change occurs as a result of internal forces; other times it is driven by external decisions and factors.

So, communities make plans to deal with change. Even communities that want to remain the same need to plan to deal with change—otherwise, outside forces will dictate how change occurs.

Don't worry—as a planning commissioner you will not be expected to deal with all of the facets of change, at least not right away. Most planning commissions have four areas of concentration:

1. Developing the community's comprehensive plan
2. Creating and maintaining land use plans
3. Planning for capital improvements and/or special projects
4. Reviewing development applications

Larger communities may have other boards or commissions that get involved in planning the future of the community. Examples of these include park boards, downtown associations, economic development authorities, housing authorities, etc.

The Planning Process

Figure 1



Figure 1 shows the basic planning process that is typically used when trying to address a problem or an issue:

1. Problem Identification: In order to be effective at planning, commissioners need to make sure they address the right problems. Sometimes the problem is obvious, such as the need for new land and utilities to support development. Other times, one problem may be based on another, such as downtown or neighborhood deterioration resulting in loss of population.

2. Identify Options: There is usually more than one solution to any given problem. Commissioners should seek out a reasonable range of solutions, and give them all due consideration. Even ideas that sound a bit radical at first may have merit, and could prove to be the best option available.

3. Involve the Public in Choosing the Best Option: Because most planning decisions affect the entire community, it is important that the public have a meaningful opportunity to participate in the decision making process. The planning commission plays an important role in the citizen participation process.

4. Implementation: Once the best solution has been chosen, the community needs to implement it. The planning commission should play a role here too—developing, evaluating, or proposing policies, ordinances (for example, zoning regulations) and administrative procedures for carrying out the necessary actions.

5. Evaluation: It is important that the commission evaluate the effectiveness of the solutions that were implemented. Did they work, or not? If not, what went wrong? What happened instead of what was anticipated? Will a different option work better, or does the community need to redefine the problem? The cycle continues.

Authority to Plan

The authority to engage in land use planning is set forth in Minnesota law. Planning is considered to be an exercise of the police powers of the state. City, township, and county planning is based on state law (often called state planning enabling legislation)¹. Under enabling legislation, planning is supposed to begin with an analysis of community needs and goals which are then formulated into a Comprehensive Plan. The Comprehensive Plan then becomes the guiding policy for community development, and the zoning ordinance and other land use regulations must be based on this comprehensive plan.

There will be more discussion later in this handbook about the need for comprehensive plans and the important relationship between plans and land use regulations.

In Summary

The planning commission is an appointed advisory body that:

- receives its charge from state enabling legislation;
- researches, studies, and generates ideas on planning issues in order to guide community land use planning;
- informs the governing body as to what citizens want and where the best long range interests of the community lie;
- evaluates information from staff, other public agencies, and testimony gathered in public hearings regarding development proposals, ordinance amendments, capital improvements, and other land use issues, in order to make recommendations to the governing body; and
- supports its decisions with findings of fact designed to promote the health, safety and welfare of citizens, and guided by the Comprehensive Plan.

¹ For cities and townships, the authority to plan is found in Minnesota Statutes Section 462.353. Counties are authorized to plan under Minnesota Statutes Section 394.23.

References for Further Reading

Some excellent resources to read on the basic concepts of planning include:

The Citizen's Guide to Planning, 4th edition, by Christopher J. Duerksen and C. Gregory Dale. APA Planners Press, Chicago, 2009.

Planning, a monthly magazine published by the American Planning Association.
www.planning.org.

2

The Planning Commission's Responsibilities

This chapter will address the following topics:

- Overview
- Makeup of a Planning Commission
- Chain of Command
- Tasks/Responsibilities
- Organizational Chart

Overview

The planning commission's role is to make recommendations regarding community development and land use to governing bodies (city councils, town boards, county boards of commissioners). These bodies depend on objective and equitable recommendations from the Commission. They will consider these recommendations to support decisions that may be politically unpopular, but also far-sighted and responsible. Without sound recommendations, policy makers are more subject to political pressure.

Although it is impossible for members of planning commissions to function completely outside of the political arena, it is the role of the planning commission to make decisions based on objective *findings*² and established policies, not political expediency.

In other words, the planning commission is supposed to look at the big picture of what is good for the community's development and well-being. The planning commission does not base its recommendations on who speaks the loudest and most often, nor should it get caught up in the NIMBY (Not In My Back Yard) mentality. The commission should consider facts and evidence, and make recommendations based on its findings and ordinances.

Makeup of a Planning Commission

Minnesota law authorizes local governments to create planning commissions. This is usually done by ordinance. The planning commission generally consists of from five to nine volunteers from the

² In the context of planning, findings refers to a listing of facts, evidence, and observations regarding a specific issue before the planning commission.

community in which the commission has jurisdiction. Most commissioners are unpaid, although some communities do provide a per diem.

While Minnesota law does not set forth any minimum requirements for an individual to be appointed as a planning commissioner, it is important that the makeup of a planning commission be inter-generational (though members must usually be at least of voting age) and integrated by gender, race, and economic status so that a broader perspective on community issues can be incorporated into the decision making process.

A person does not have to be a realtor, surveyor, engineer, developer, architect, or other “expert” to serve on a planning commission. However, the job does have certain qualifications:

- A commitment to attend meetings of the commission
- A commitment to becoming informed about the issues before the commission
- The ability to listen to different perspectives on an issue
- A commitment to being objective and fair in evaluation of issues before the commission
- The ability to make hard decisions in the public’s interest in the face of controversy
- A commitment to public service and a respect for the ability of a good planning process to help guide the development of the community

Chain of Command

Under state law, there are several ways in which a commission can be organized and staffed. Minnesota Statutes Section 462.354 states that a municipality may by charter or ordinance create a planning agency. The planning agency is an advisory body, except where other powers and duties are imposed by statute, by charter, or by ordinance consistent with the municipal charter. The planning agency may take the following alternative forms:

1. It may consist of a planning commission, which may or may not include municipal officials among its members. The planning commission may be provided with staff, which may be a division of the administrative structure of the municipal government. The commission advises the governing body. (This is the most common structure.)
2. It may consist of a planning department with a planning commission advisory to it; the department is advisory to the governing body and the municipal administration. The planning department may be provided with an executive director and other staff.

While these organizational options pertain specifically to cities and towns, the structure for county or township planning commissions is similar.

An organizational chart can be used to diagram your community’s government structure, and the placement and role of the planning commission in this structure. If your community has one, please insert it on page 11.

Tasks/Responsibilities

The responsibilities of a planning commission will vary among jurisdictions depending upon the policies of the community related to planning, the attitude of the governing officials, quality of leadership and staff support, the level of urbanization, etc. Generally speaking, a planning commission is responsible for the following:

- Assist in preparing and updating the Comprehensive Plan. This plan contains the goals, policies, standards, and maps which guide the physical, social, and economic development of a community. The planning commission assists in establishing these goals and policies by studying background data, examining development problems and opportunities, and working to create a vision of the future of the community.
- Assist in preparing or reviewing official controls such as zoning ordinances, subdivision regulations, site plan regulations, building codes, well ordinances, sanitary codes, gravel extraction ordinances, and others.
- Review and make recommendations on development proposals, rezonings, subdivisions, and conditional/special use permits.
- Assist in the preparation of a Capital Improvement Program.
- Act as liaison to other governmental units such as the school district, regional planning agencies, and state agencies.

Through these activities, the planning commission instills the planning perspective into the local government's decision making processes.

The planning commission operates as both a legislative body and a quasi-judicial one. Preparing or revising plans or ordinances are considered legislative functions, and city boards and commissions have more flexibility in decision-making. Administering an existing zoning ordinance is considered a quasi-judicial function, which carries the force of law and may be subject to court review. Therefore, cities must follow rules that provide due process and equal protection under the law. planning commission rules and procedures are discussed in Chapters 9 through 12 of this handbook.

Insert
Your
Organization
Chart
Here

3 Board of Adjustments

This chapter will address the following topics:

- **The Makeup of the Board of Adjustments**
- **The Responsibilities of the Board**
- **The Board's Authority**

A Minnesota city, town, or county which has a Zoning Ordinance or an Official Map must establish a Board of Appeals and Adjustments by ordinance to consider variance requests and appeals to the provisions of the zoning regulations or its interpretations.

Makeup of the Board

In cities and townships, the Board may be a separate board, the governing body, the planning commission or a committee of the planning commission. In counties, the Board of Adjustment cannot be the governing body or the planning commission; it must be a separate entity.

The Board usually consists of five to nine volunteer members who meet on a monthly or as-needed basis. Qualifications for this board are similar to those for the planning commission. The job of the Board member can be difficult because the members must be willing to deny requests made by their neighbors and others in their community.

Responsibilities

The board of adjustments has the following responsibilities:

- Review appeals of actions by the zoning administrator. Administering the zoning ordinance often involves some interpretation on the part of the zoning administrator. If a person disagrees with the zoning administrator's interpretation on a requirement, that person may ask the board of adjustments to make a ruling. Both the appellant and the zoning administrator will have an opportunity to make their case before the board.
- Consider requests for variances from the literal provisions of the zoning ordinance. The zoning ordinance contains specific standards that are applied to the development of property. Sometimes there are unique circumstances on a given parcel that make it infea-

sible to meet all of the standards. In such a case, the owner of the property can make an appeal to the board of adjustments and ask for a variance from the requirements.

- Other duties as the governing body may direct.

Meetings of the board of adjustments are conducted in the form of a public hearing. The proceedings often appear somewhat like a trial, in which the case is explained, evidence is presented, and testimony is taken. The board then reviews the information and makes a decision on the matter.

Authority

Depending upon the jurisdiction and the powers conferred upon it, the board either:

- makes recommendations and is advisory to the governing body; or
- makes final decisions on variances and interpretations/appeals.

However, it should be noted that the discretion of the board is strictly limited by state enabling legislation, which states that the board must make specific findings regarding the presence of practical difficulties prior to granting a variance. You can read more about “findings of fact” in Chapter 11.

4

Commission/Board Orientation

This chapter includes the following items:

- **Checklist of Planning Commission Orientation Topics**
- **Sample Planning Commission Mission Statement**
- **Sample Bylaws**

New members of the planning commission and/or the board of adjustments should be provided with an orientation session(s) outlining their roles and responsibilities. They should also be provided with resource materials such as local ordinances, maps, etc.

Provided below is a checklist of items that should be covered in the orientation sessions:

- _____ Brief review of the community's Comprehensive Plan and other significant planning documents
- _____ Explanation of the structure and workings of the zoning ordinance
- _____ Explanation of how to read and interpret the zoning map
- _____ Review of the subdivision regulations
- _____ Discussion of other land use controls enforced in the community (flood plain regulations, shoreland management, airport zoning, etc.)
- _____ Review of the community's official map
- _____ Review of commission/board agendas and minutes
- _____ Review samples of reports provided to the commission/board for variances, rezonings, conditional uses, etc.
- _____ Review policies on conflict of interest
- _____ Discuss training opportunities

Training courses are available for planning commissioners and board of adjustments members from the American Planning Association–Minnesota Chapter and other organizations in the state. A listing of contacts is provided in the Appendix.

Sample Planning Commission Mission Statement

Recognizing that community planning is a continuing and dynamic process, always subject to societal changes, the City/Township/County of _____ Planning Commission has set forth the following mission statement to clarify its role in the planning process.

1. The Planning Commission is a ____member volunteer citizen Commission appointed by the (governing body) and staffed by _____.
2. The Commission is charged with reviewing, evaluating, and updating the City/Township/County Comprehensive Land Use Plan with the objective to maintain and/or implement the community values defined as quality of life in both a living and working environment. The Commission must then communicate these updates to the (governing body).
3. To accomplish the annual review of the Comprehensive Plan, the Commission encourages constructive citizen and staff participation in the public planning process through public hearings and at regular meetings, through newsletters, and through neighborhood, area, or district planning meetings.
4. The Commission shall complete studies and recommend long term development plans and policies which are consistent with the Comprehensive Plan and the values of the community which are life enriching, economically beneficial, and environmentally sound.
5. The Commission shall utilize (and recommend utilization by other City/Township/County public officials and entities) implementation tools such as zoning and land use permits, subdivision approvals, official mapping, capital improvements programming, and housing plans.
6. The Commission shall encourage efficient utilization of existing infrastructure and buildings and innovative and effective management of public and private land.
7. The Commission shall create, with the assistance of the staff, a land use, economic, and demographic information base for use by citizens and developers.
8. Noting that the City/Township/County of _____ is part of a larger community, the Commission will encourage joint meetings and sharing of information with other commissions and committees within the City/Township/County, and with adjacent Planning Commissions.

Sample Bylaws

These bylaws were drafted for a city, but may be adapted for townships and counties by changing the language. Governmental units that wish to use these as a guide should make changes as needed to fit local policies and procedures.

Article I. Introduction

Section 1. Purpose

It is the intent of the _____ Planning Commission to conduct its business and perform its responsibilities and duties in an orderly, efficient, fair and lawful manner. These bylaws are established for that purpose.

Section 2. Application of Bylaws

Unless otherwise specifically indicated, these bylaws shall apply to the transaction and administration of all Planning Commission business and the conduct of all Planning Commission meetings and hearings.

Article II. Offices and Duties

Section 1. Offices Designated

The Commission, at its first regular meeting in January of each year, shall select a Chairperson and Vice Chairperson.

Section 2. Recording of Meetings

The _____ shall supply a qualified staff member to perform all general corresponding and recording secretarial duties for the Planning Commission.

Section 3. Duties of Officers

The duties and powers of the offices of the Planning Commission shall be as follows:

A. Chairperson

- 1) Preside at all meetings of the Commission
- 2) Call special meetings of the Commission in accordance with the City Ordinance
- 3) Sign documents of the Commission
- 4) See that all actions of the Commission are properly taken
- 5) Cancel or postpone any regularly scheduled meetings

-
- 6) Order end to disorderly conduct and direct law enforcement to remove disorderly persons from Planning Commission meetings

B. Vice Chairperson

In the event of the absence, disability, or disqualification of the Chairperson, the Vice Chairperson shall exercise or perform all the duties and be subject to all the responsibility of the Chairperson.

C. Secretary

A city, county, or township staff member will be assigned to perform the functions of Secretary. The Secretary shall keep record of the proceedings of every meeting of the Planning Commission.

Article III. Members

Section 1. Number.

The Planning Commission shall consist of ____ voting members.

Section 2. Members Appointed.

Voting members shall be appointed by the City Council, County Board, or Township Board for a three year term. Terms shall run from January 1 through December 31. Terms shall be staggered so that there will be continuity of the Commission.

Section 3. Voting.

A member must be present to vote.

Section 4. Vacancies.

Vacancies shall be filled by appointment of the City Council, County Board, or Township Board.

Article IV. Meetings and Hearings

Section 1. Notice

Notices of all meetings and hearings of the Planning Commission shall be made in accordance with all statutory and ordinance notification requirements.

Section 2. Meetings

All meetings of the Planning Commission shall be open to the public.

Section 3. Workshops

Workshops and other meetings whose sole purpose is for general information and/or

educational purposes will be open to the public. Public testimony may or may not be allowed.

Section 4. Meeting Records

All tapes, minutes, evidence, exhibits, correspondence, maps, plats, etc. shall be made a part of the record, become the property of the City/County/Township of _____, and be maintained as a permanent record.

Section 5. Meetings

A. Date and Time

The Planning Commission shall meet regularly on the _____ of the month at ____ pm, or as soon as practical.

B. Location

The Commission shall meet in regular session in the City Hall Chambers/Board Room/Township Hall, or otherwise designated by ordinance.

C. Order of Business

- 1) Approval of Agenda
- 2) Approval of Minutes
- 3) Public Hearings
- 4) Old Business
- 5) New Business
- 6) Communications and Reports
- 7) Other
- 8) Adjourn

D. Special meetings

The Chairperson, Vice Chairperson, City Council, or Mayor may call for a special meeting at any time. Notice of the time and place shall conform to the Open Meeting Law.

E. Additional Agenda Items

Agenda items are to be added at the workshop meeting. If no workshop meeting is held, additions may be made by calling the Chairperson one week prior to the regular monthly meeting.

Section 6. Parliamentary Procedure

All Commission meetings shall be governed by Robert's Rules of Order Newly Revised in all

cases to which they are applicable and not in conflict with these bylaws, City Code, or other rules this Commission may adopt.

Section 7. Agenda

- A. The agenda shall be prepared by planning staff for the Planning Commission meeting and shall close at noon the _____ prior to the meeting.
- B. Any Planning Commission member can place an item on the agenda. No item shall be placed on the agenda unless the item is expressed in such a way as to clearly show the subject matter involved.
- C. The agenda may be amended during a Planning Commission meeting by a majority vote of the Commission.
- D. The agenda shall generally organize matters to be addressed at the meeting so as to best promote opportunities for effective public input and the timely and efficient performance of Planning Commission responsibilities. Items of business likely to attract the attendance of many persons should generally be placed early on the agenda.
- E. Planning staff shall prepare a written report detailing the request and the ordinance provisions that apply to the matter.

Section 8. Procedure for Public Hearings.

- A. Planning staff or consultants, if any, shall summarize for the public the relevant issues of the application contained in the written staff report. The Commission members may direct questions to staff regarding the application.
- B. The Chairperson shall call the public hearing to order and declare the time, and prior to taking testimony, shall explain:
 - 1) The order of testimony
 - 2) The purpose and requirements of the public hearing under Minnesota law
 - 3) That each speaker shall provide their name and address and that public comments should be limited to matters pertinent to the application under review and avoid duplicative testimony. The Chairperson may place reasonable time limits on public comments, depending on the number of persons waiting to testify on the matter.
 - 4) The type of application under consideration
- C. The applicant and/or representative shall be given an opportunity to present evidence in support of the request and rebut any issues or conditions identified in the staff report
- D. Members of the public, if any, may testify, either in person or through their agent. Written testimony submitted may be read and will be added to the public

record.

- E. The applicant shall have an opportunity to answer questions from the Commission.
- H. The Commission shall close the public hearing by motion and majority vote of the Commission. The Commission may deliberate and decide the matter.
 - 1) The Commission may direct questions to the applicant, planning staff, or public to clarify issues but no further testimony may be received from the public.
 - 2) If the Commission identifies relevant facts that remain unknown or disputed, the Commission may postpone closing the hearing by motion and majority vote until the Planning Commission's next meeting and refer the issue to planning staff for further fact finding.

Section 9. Protocol for Public Hearings

- A. Everyone who wishes to give testimony shall be given a reasonable opportunity to speak.
- B. All statements or questions should be directed to the chairperson.
- C. All statements should be as factual as possible and should not involve personalities.
- D. Speakers should refrain from repeating what has already been stated.
- E. Each speaker shall provide his or her name and address to the recorder.
- F. The Planning Commission reserves the right to question any speaker.
- G. Written testimony may be received.
- H. No additional testimony may be offered after the close of the public hearing.

Section 10. Communications with Public and Applicant

- A. General. Prior to the public hearing or Commission deliberation, no Commission member shall lobby the merits of a pending case with staff, applicant, Commission member, or the general public.
- B. Disclosures. If a commissioner has discussed the pending case, the commissioner shall disclose the facts relating to such discussion during the public hearing.
- C. Exception. Nothing in this section shall preclude the general information communication by Commission members relating to the general conduct of a meeting or hearing, nor shall anything in this section forbid staff or commissioners from discussing with commissioners an upcoming meeting, so long as the facts or merits of the meeting are not discussed.

Section 11. Quorum

A majority of the Commission members entitled to vote shall constitute a quorum for the transaction of business.

Section 12. Conflict of Interest

Any member of the Planning Commission who shall feel that he or she may appear to have, or in fact has, a conflict of interest on any matter that is on the Planning Commission agenda shall voluntarily excuse himself or herself, vacate his or her seat, and refrain from discussing and voting on said matter as a Planning Commissioner.

A conflict of interest is any direct contractual, pecuniary, or other beneficial interest in the outcome of a matter before the Planning Commission.

Section 13. Orientation for new Planning Commissioners

To assist new Planning Commission members in learning their responsibilities, and to develop their understanding of the planning process as quickly as possible, they will be required to:

- A. Attend an orientation session with (staff, Planning Commission Chair, other).
- B. Read the Planning Commissioner Orientation Manual.

Article IV. Education, Conference and Convention Policy

The (governing body) and Planning Commission of _____ recognize and accept the concept that the acquisition and maintenance of a body of knowledge and skills are necessary and desirable to perform the job of the Planning Commissioner. Further, both groups encourage and highly recommend periodic attendance at various educational opportunities, conferences, and conventions.

The following is the policy of the _____ Planning Commission on educational meetings, conferences, and conventions:

- A. Attendance at educational meetings, conferences, and conventions is subject to availability of funds.
- B. Attendance at educational meetings, conferences, and conventions is voluntary. Planning Commission members are encouraged to attend educational meetings, conferences, and conventions.
- C. Involvement in relevant professional organizations such as APA-MN, office holding, or committee work is considered educational.
- D. Planning Commission members are encouraged to participate in the budget process and to request allocations for educational purposes.
- E. In the event of budget constraints, the acquisition of skills and knowledge through educational meetings, conferences, and conventions shall take precedence over the maintenance of same.

5 The Comprehensive Plan

This chapter will address the following topics:

- **What is a Comprehensive Plan?**
- **How is it Used?**
- **Why Should a Community Have a Comprehensive Plan?**
- **How is it Developed?**
- **How Often Should it be Updated?**

What is it?

“The term Comprehensive Municipal Plan means a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the municipality and its environs...and it may include, but is not limited to, the following: statements of policy, goals, standards, a land use plan, including proposed densities for development, a community facilities plan, a transportation plan, and recommendations for plan execution. A Comprehensive Plan represents the planning agency’s recommendation for the future development of the community.”
(Minnesota Statutes Section 462.352 Subd. 5.)

How is it Used?

The Comprehensive Plan is supposed to serve as a resource for guiding decisions about the development of the community. (You might say that it is the “program statement” for the development of the community.) It helps identify important community elements, features and values, goals and objectives. It is used by those involved in “building the community” to make sure that what they build achieves the desired outcome. Decisions about future development of the community should be consistent with the Comprehensive Plan.

For example, the land use component of the plan may use a map to divide the community into broad land use categories such as residential (various densities), commercial, industrial, public, etc. Then, as the zoning ordinance is defined (or redefined), its zoning categories and maps should generally reflect the land use element of the Comprehensive Plan.

In order for the Comprehensive Plan to provide useful guidance to local government officials and the general public, it needs to be current and accurately reflect the community's history and vision for the future. If it becomes outdated, or out of synchronization with community realities, then it will not be respected as a worthwhile guide.

Finally, as a policy document, the Comprehensive Plan does not set forth mandates, laws, or ordinances. Its purpose is to guide decisions related to those instruments. Elected officials still have the option of making decisions that run counter to the Comprehensive Plan, but at least those decisions can be evaluated in a broader context, with a clear understanding of the interrelationship of the factors involved.

Why Should a Community Have a Comprehensive Plan?

While not every unit of local government in Minnesota is required to adopt a Comprehensive Plan,³ there are several good reasons why every community/county should have one:

1. A Comprehensive Plan can help both the public and private sectors of the community make better development decisions. If the Comprehensive Plan is out of date (or non-existent) it cannot adequately serve as a guide for the development of the community.
2. Land use decisions can benefit from a Comprehensive Plan that considers the “best” locations for various uses, the ability to service various areas of the community, compatibility with adjacent uses, etc.
3. The community can anticipate needed public improvement projects, and be better prepared to finance them, if it has a Capital Improvements Program (see Chapter 6). A Capital Improvements Program helps identify, prioritize, and program future capital expenditures.
4. A Comprehensive Plan can help avoid unplanned growth and development around the community. Unplanned development can cause urban sprawl, and eventually place a burden on the community when the unplanned areas demand urban services.
5. Planning for growth and development leads to greater efficiencies in the provision of infrastructure and services to developing areas. Communities need to plan for future growth and development, particularly in the arena of annexation, sprawl, urban service boundaries, and coordination with adjoining jurisdictions.
6. Other quality of life issues can also be addressed through the plan, such as how big a community wants to become, preservation of natural areas and sensitive environments, provision of recreation areas, housing quality and quantity, aesthetics, etc.

³ In the seven county metropolitan area, all cities are required to adopt a comprehensive plan and submit it to the Metropolitan Council for review under Minnesota Statutes Section 462.355, Subd. 1a. See the Local Planning Handbook, <http://www.metrocouncil.org/planning/LPH/handbook.htm>.

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7. Land use ordinances and decisions based on a Comprehensive Plan will hold up better under judicial scrutiny if challenged in a court of law.

Failure to adequately plan for the future development of the community can adversely affect the quality of life enjoyed by its residents. The cost of government will be higher to provide services than would otherwise be needed if the community planned its growth and development. Important natural and cultural features that reflect the community's heritage may be lost to unplanned development. Investments in public facilities that are not carefully planned may lead to inefficiencies and lost opportunities.

How is the Comprehensive Plan Developed?

The process for creating a Comprehensive Plan is not “etched in stone” and varies from community to community, depending on such factors as community size, scope of the plan, planning experience, and resources available.

While it is beyond the scope of this handbook to outline a detailed comprehensive planning process, the following relatively simple three-phase approach is offered for consideration.

Phase 1: Identifies the community's existing resources, and makes projections about future growth, population, and housing trends. The purpose of this phase is to provide an understanding of the community's resources as they exist today, and make some predictions or forecasts about the future.

Phase 2: Identifies and clarifies key issues that the community needs to address in the comprehensive plan. This phase focuses on the subjective/value-based decisions that the community should face as it plans for the future. The purpose of this phase is to help answer the question—How do we want our community to look and function 10–20 years from now?

Phase 3: Transforms the information from the previous two phases into policies that will guide the future development of the community.

Under Minnesota Statutes Section 462.355 (Section 394.24 for counties), the planning commission is responsible for the development of the Comprehensive Plan. Commissions working in larger communities may have experienced planning staff available to do the bulk of the work on the planning process. Most commissions serving smaller communities do not have experience with such matters. Oftentimes consultants are used to facilitate the process, gather data, and help draft plans and policies, while the commission provides oversight and quality control.

How Often Should the Plan Be Updated?

A Comprehensive Plan should be updated on a periodic basis. The general rule of thumb is that every 5 years it should be reviewed to consider new trends, changing economic conditions, and community goals. A ten-year interval between plan updates is typical, although the timing will depend on each community's rate of growth and change. (Communities in the Metro area are required to update their plans every ten years.) Answers to the following questions will help you decide if your community's Comprehensive Plan needs updating:

- Do the policies spelled out in the plan still reflect the community's desires or expectations?
- Are the City's administrative policies and actions consistent with those found in the Comprehensive Plan?
- Do the policies in the Comprehensive Plan provide useful direction?
- Are the policies too specific or not specific enough?
- Have the actions recommended in the plan largely been completed or rendered irrelevant by changing circumstances?

6

The Official Map & Other Planning Documents

This chapter of the manual will address planning documents that work in conjunction with the Comprehensive Plan:

- **The Official Map**
- **The Capital Improvements Program**
- **The Overall Economic Development Program**
- **Other Types of Plans**

The Official Map

The Official Map is a process authorized by Minnesota Statutes Section 462.352 to identify land needed for a public purpose (i.e., streets, aviation purposes, and other necessary public facilities or services) in order to implement the Comprehensive Plan.

After adoption of a major thoroughfare plan or community facilities plan, the community may adopt an Official Map by ordinance. Once an area that is privately owned has been delineated for a public purpose on the Official Map, the city is not required to pay for buildings or structures that may be subsequently placed within the mapped areas without a permit.

Capital Improvements Program

The Capital Improvements Program is a planning document which defines and sets priorities for the community's capital projects, usually for a five-year period with annual updates. It usually includes text, maps, tables of projects, costs by year, and a proposed method for project financing.

This plan is intended to ensure that improvements are made to the community on an equitable basis and that utility projects precede street projects, etc. The Capital Improvements Program may be adopted after holding public hearings which give residents an opportunity to gain a better understanding of the improvement process and time to anticipate improvements and investments in their area.

The plan is not a final commitment to projects, and each project requires additional approval by the governing body prior to proceeding. The plan assists the governing body in determining what projects to commit to on an annual basis and also prepare bonding documents if needed.

The Capital Improvements Program is a responsible part of the planning process because it places fiscal responsibility on goals and helps the community develop at a reasonable and affordable rate.

The Capital Improvements Program should reflect the goals and plans of the Comprehensive Plan.

Other Types of Plans

There are many other types of plans that planning commissions may be involved in, including park and open space plans, watershed plans, downtown or neighborhood revitalization plans, transit station area plans, and other plans that apply the basic planning process to a specific area or corridor. These plans may be integrated into or treated as elements of a comprehensive plan. While these plans are typically prepared by staff or consultants, the planning commission may be interested in these plans as they relate to the Comprehensive Plan and community ordinances and regulations.

7 The Zoning Ordinance

This chapter addresses one of the most important topics for the Planning Commission: zoning. It includes:

- **The Zoning Map**
- **Creating Zoning Districts**
- **The Zoning Text**

The Zoning Ordinance translates the land use goals of the Comprehensive Plan into an ordinance or law which regulates the way in which the land may be used by property owners. The ordinance regulates the development of individual lots and the use of land and buildings within the community. The regulations are contained in two important documents: the Zoning Map and the text of the Zoning Ordinance.

Zoning Map

All of the land in the community is divided into zoning districts which are drawn and shown on the jurisdiction's official map. The purpose of the districts are to outline what land uses are acceptable in which areas of the community. A typical zoning map will designate areas for commercial uses, residential uses, industrial uses, etc.

Figure 2 shows part of a zoning map from a small city in Minnesota. The zoning districts are outlined with heavy lines, and are identified with bold letters and numbers such as R-1, R-2, B-1, PU, etc. Each of these designations permit specific types of land uses within their boundaries. For example, the R-1 areas may allow only single family dwellings, while the R-2 areas may allow duplexes or triplexes in addition to single family dwellings. The B-1 area may allow only commercial uses, or only upper-story residential units in mixed-use buildings. Likewise, commercial uses are often prohibited from developing in residential districts.

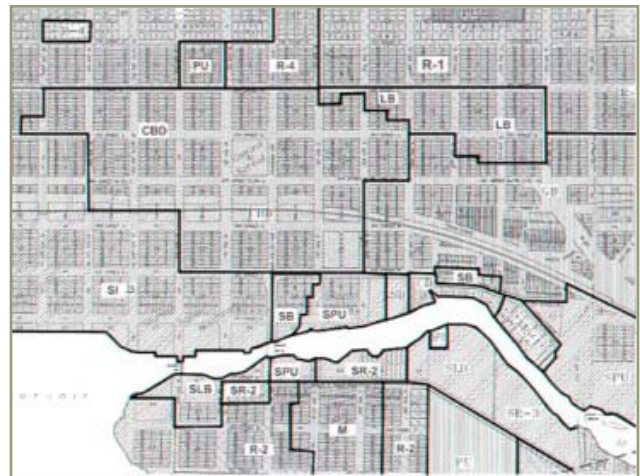


Figure 2

Creating Zoning Districts

The zoning of a property must comply with its Comprehensive Plan designation in cities in the seven-county metropolitan area. In many cases, the zoning districts closely represent the actual land use in the community. For example, areas already developed as residential generally are zoned as such, and commercial district boundaries tend to follow established commercial areas. Creating districts to follow existing development is fairly easy, though care must be taken to make sure that district boundaries are not arbitrary or creating “single use” districts.

Many communities use zoning districts to guide certain types of development into specific areas. This is especially true in newer communities and those experiencing growth. Areas that are undeveloped or in need of redevelopment may be zoned to encourage certain land use activities. Areas may be set aside for residential, commercial, industrial, or open space needs. As the community continues to develop, those uses are channeled into the appropriate zone.

Since the zoning map is a legal document, the boundaries of the zoning district must be drawn with care and precision. Errors delineating a district boundary may cause a land owner hardship or development delays, and could even affect such things as mortgage financing and property taxes.

Usually zoning boundaries follow centerlines of streets, alleys, railways, or other landmarks, so as to allow for easier interpretation of a parcel’s designation. However, sometimes the boundaries may need to follow individual lot lines or cross through unplatted parcels. When this occurs, extra care must be taken to ensure that the boundaries are appropriately placed.

Zoning Ordinance Text

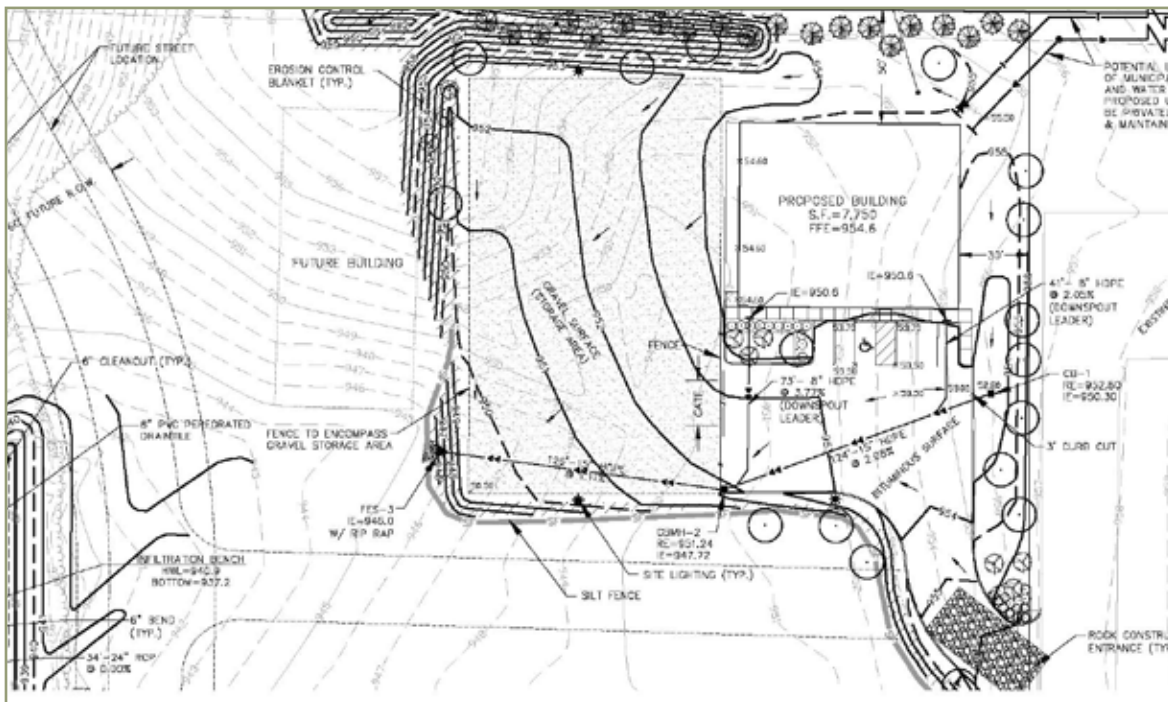
While the zoning map outlines the various zoning districts, it is the actual text of the zoning ordinance that spells out the specific land use regulations. The ordinance addresses such matters as:

- How the ordinance will be enforced
- Definitions
- A general description of the intent of each zoning district
- What specific uses are allowed in each zone, including permitted uses, restricted uses, and conditional uses
- Minimum requirements for lot size, setbacks, fences, landscaping, etc.
- Off-street parking requirements
- Regulations of signs
- Process for seeking variances, rezonings, conditional use permits, etc.
- Treatment of non-conforming uses

The provisions of the zoning ordinance are usually administered and enforced by the zoning administrator. The zoning administrator generally has the following duties:

- A property developer usually is required to submit a site plan for approval prior to starting construction. The site plan shows how the proposed project will comply with the ordinance requirements, such as building setbacks, provision of off-street parking, location of signs, landscaping, etc. Figure 3 shows an example of a site plan.

The site plan requirements may vary depending on the type of development or the scope of the project. For example, many communities require less information for a single family dwelling or duplex than they would for a commercial development. Large projects may require a site plan drawn by a civil engineer, while the site plan for a new garage on a residential lot may be drawn by the property owner.



Citizen Planner Handbook

Description of Districts

The zoning ordinance usually provides a brief description of the intent of each district. This description helps in the initial determination of boundaries on the zoning map, and is referred to when a property owner seeks a new zoning classification. An example of the purpose and intent description of a district follows:

Figure 4

Table 23.7-1 Permitted Uses						
Use	R-1	R-2	R-3	B-1	B-2	I-1
Residential						
Single-Family Dwelling	P	P	P			
Duplex		P	P			
Multi-Family			P	P		
Commercial						
Bar/Lounge					P	
Bookstore				P	P	

AG AGRICULTURAL DISTRICTS

Purpose and Intent. These districts are intended to allow for the continuation of agricultural practices and activities especially in areas that may be annexed to the City of _____ where public services are not yet available, an alternative use is not imminent and the owner desires to continue to farm the land. For uses permitted by right refer to Chapter 23.5(F).

Use Categories in Districts

Each zoning district allows certain types of land uses which are specifically spelled out in the zoning ordinance. This usually occurs in a “table of permitted uses” and is often supplemented with other sections of the ordinance which give more detail about permitted, restricted, and conditional uses. Figure 4 shows an example of part of a table of permitted uses:

The table of permitted uses shows that duplexes are permitted in R-2 and R-3 zones, but they are not permitted in any of the other zones, while multi-family dwellings are permitted in the B-1 districts as well as the residential zones.

Permitted Uses are allowed by right in the district. Permitted uses are subject to dimensional regulations and any required building permits, but as long as they meet the requirements for the zoning and/or building codes, they have to be permitted. (Not all jurisdictions have a building code; some counties or townships issue zoning permits which state that the proposed development conforms to the zoning ordinance, but do not address structural issues.) Permitted uses are also known as primary or principal uses.

Accessory Uses are located on the same lot, but are subordinate or incidental to principal use. Accessory uses are subject to dimensional regulations and required building permits. They include

detached garages and outbuildings which may be desired to enhance the use of the property but not change the primary permitted use of the parcel.

Restricted Uses are allowed by right in the district if special restrictions are met and maintained. Restricted uses are subject to dimensional regulations and any required building permits, and as long as they meet the requirements for the zoning and/or building codes, they have to be permitted.

Conditional Uses are permitted in a district only upon issuance of a Conditional Use Permit (CUP). They are land uses that would not be appropriate generally, but may be allowed with appropriate conditions upon a finding that the use or development conforms to the Comprehensive Plan of the community, and the use is compatible with the existing neighborhood. A CUP differs from a restricted use in that the CUP requires a special application, a public hearing, and formal action by the governing body, whereas a restricted use does not.

Planned Unit Development (PUD) is a site-specific zoning district intended to provide flexibility in development location and design. The PUD process allows variety (a mixture of land uses, housing types, and densities) to maximize the development potential of land while remaining sensitive to its unique and valuable natural characteristics. PUDs may involve density transfer. Project density may be clustered, basing density on number of units per acre rather than specific lot dimensions, and the land saved may be used for common and public open space.

Overlay Districts provide for specific standards which are applied in addition to the general standards of one or more ‘underlying’ primary zoning districts. Examples include: floodplain districts, wetland districts, shoreland management districts, and airport zoning districts.

Minimum Requirements for Lot Size, Yards, Fences, Landscaping

Not only does the zoning ordinance determine where certain uses may be located in the community, it usually regulates the placement, size, and bulk of structures. Often referred to as site development requirements, these standards address such things as:

- Minimum lot size (area) and minimum lot width
- Front, rear, and side building setbacks from property lines
- Building coverage ratios (how much of the lot can be covered by buildings or impervious surfaces)
- Maximum building size and height
- Setbacks for parking areas
- Landscaping requirements (usually does not apply to single family residential uses)
- Minimum standards for parking lot design

If a property cannot meet the site development requirements, the owner will need to apply for a variance from the requirements.

Off-Street Parking Requirements and Sign Regulations

Most zoning ordinances include special sections for requiring off-street parking and regulating signs. The intent of off-street parking requirements is to insure that property owners provide adequate parking for tenants, patrons, and occupants of the property. The ordinance will generally require a specific number of parking spaces based on the land use. A formula is used to determine the actual number of stalls required. For example, an apartment complex may be required to provide 1.5 stalls per dwelling unit, while a retail complex may be required to provide 1 stall per 250 square feet of retail space. There are guidebooks that can help a community make determinations on parking requirements, supplemented with actual observations of parking lot use.



Sign regulations are often one of the most controversial parts of the zoning ordinance. These regulations often address the size and location of signs, whether or not temporary or portable signs are permitted, and how many signs can be displayed on a property. As a general rule, ordinances cannot regulate the content (the message) of signs without running afoul of First Amendment (free speech) issues.



Process for Seeking Variances, Rezonings, Conditional Use Permits

The Zoning Ordinance outlines the procedural requirements for seeking special considerations to its literal provisions. If an individual wants to change the zoning of a parcel, or cannot meet all of the required setbacks, or needs a CUP, certain steps must be followed in order to process the request. The ordinance will generally require the following:

1. The petitioner (person seeking the change) must apply to the planning authority using forms provided by the authority.
2. The petitioner may need to provide documentation supporting the request for a change. The documentation might include such items as a survey or site plan, a written description of why the request is needed, an impact study, and a filing fee.
3. The planning authority notifies neighbors and property owners within a given distance of the subject property that a request for variance, rezoning, or CUP has been made.
4. The petitioner will be allowed an opportunity to present his/her case to the planning authority, as will neighbors who may support or oppose the request. In some cases, the planning authority has the ability to make the decision to approve or deny the request, and sometimes the request must go to the governing body for ultimate determination.

60-Day Rule

When administering the zoning ordinance, the zoning administrator must recognize that the local government has only 60 days to review a written request related to zoning or it is deemed automatically approved under Minnesota Statutes Section 15.99. Courts have demanded strict adherence to this rule. The 60-day rule does not apply to plat or subdivision approvals or building permits. Subdivision statute Section 462.358 provides its own time periods of 120 days for preliminary plat approval and 60 days for final plat approval.

The 60-day period does not begin to run until the local government receives a complete application. If a local government denies a request, it must give the applicant written reasons for denial at the time it denies the request. If the written statement for denial is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial but before the expiration of the 60-day period. The written statement must be consistent with the reasons stated in the record at the time of denial.

The failure of a motion to approve a request constitutes denial so long as the members voting against the motion state on the record the reasons for denial.

A local government can extend the application deadline an additional 60 days (up to 120 days) to consider a request, if the following is provided to the applicant: (1) written notification of the extension before the end of the initial 60 day period; (2) the reasons for the extension; and (3) the anticipated length of the extension.

8

The Subdivision Regulations

This chapter addresses subdivision regulations and the subdivision review process:

- **The Subdivision Ordinance**
- **The Subdivision Process**
- **Preliminary Plat Review**
- **Final Plat Review**

The Subdivision Ordinance

Like the Zoning Ordinance, the Subdivision Ordinance also translates the Comprehensive Plan into law and establishes the procedures for dividing the community into streets, blocks, buildable lots, and open spaces consistent with the Comprehensive Plan.

The Subdivision Ordinance provides for organized and planned development of subdivided areas. It requires consideration of the coordinated layout and proper arrangement of streets and utilities, recreation areas, lot sizes which meet the minimum zoning ordinance standards, provision for drainage, pedestrian movement, and coordination with other communities.

The Subdivision Process

The subdivision process begins when a land owner approaches the city with plans to divide a parcel into lots. City staff reviews the subdivision process and requirements with the developer, and discusses the importance of coordinating the developer's plans with the city's long range plans.

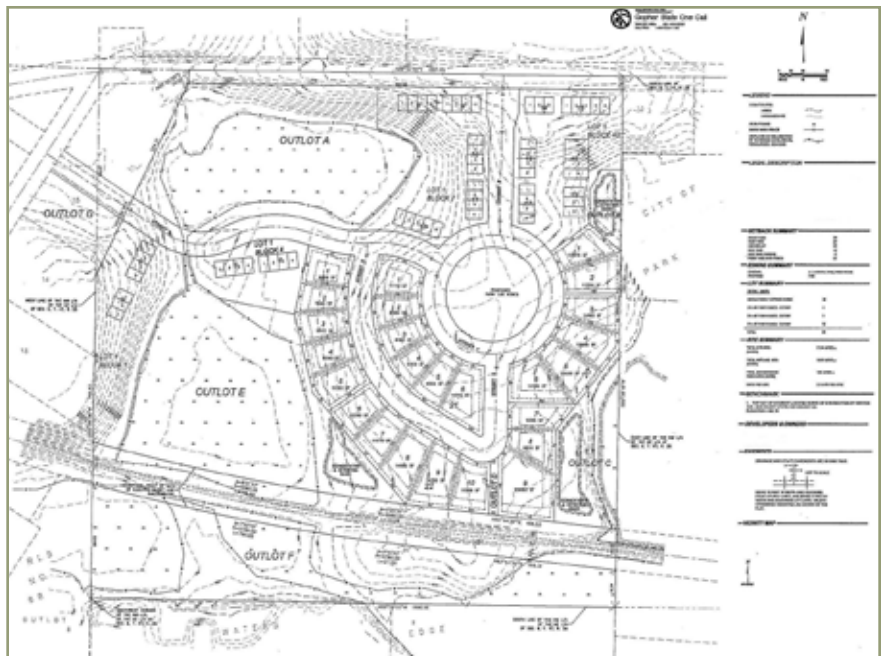


Figure 5

Preliminary Plat Review

The next step involves the preparation of a document called the preliminary plat. The preliminary plat is a detailed plan showing how the land will be divided. It shows the location of streets and easements, water and sewer improvements, the size and shape of lots and blocks, open space, etc. The following checklist shows the types of information typically required on a preliminary plat. Figure 5 shows an example of a preliminary plat.

When the developer has prepared the plans with the required information, it is submitted to the city for review and consideration for approval. The Planning Commission should review the preliminary plat based on the considerations such as the following:

1. Is the proposed subdivision consistent with the Comprehensive Plan?
2. Are the proposed uses within the subdivision consistent with the Zoning Ordinance?
5. Is the proposed land use compatible with the surrounding land uses in the area?
4. Does the proposed development make the best use of views to and from the lots, is the layout suitable for the proposed use, and is the layout suitable for the topography of the land?
5. What are the needs of the community for parks and open space in the area?
6. Is the proposed development complementary to existing open space and natural areas, including lakes and wetlands?
7. Is the transportation system within the subdivision laid out in a safe and pleasant manner, and does it provide connections to existing public streets and provide for future continuation of public streets into undeveloped land?
8. Does the proposed subdivision conform to the street and block layout requirements of the Subdivision Ordinance?
9. What are the general economic impacts of the proposed subdivision?
10. What population changes will occur, and what are the impacts upon the existing public facilities including thoroughfares, school systems, and recreation services?
11. Are the proposed lots large enough to adequately provide for the proposed development, or might it be necessary in the future to grant variances for proposed buildings, due to lot peculiarities within the subdivision?
12. Are easements provided for all future public utility needs, and for access to other public areas?
13. Is an environmental assessment worksheet required by state law, and if so, what are the findings and are adequate measures taken to mitigate any significant issues?

A public hearing is also held on the preliminary plat to receive public comment plus comment from other communities, if appropriate, along with utility companies and the Department of Transportation or other road jurisdiction.

The Commission may approve the preliminary plat, suggest changes, or deny the plat. The Commis-

Preliminary Plat Checklist

- ☐ Proposed name of subdivision, which shall not duplicate or resemble the pronunciation of any plat previously recorded in the County
- ☐ Location by section, town, range, or by other legal description
- ☐ Names and addresses of the owner, subdivider, surveyor, and designer
- ☐ Graphic scale, North point, date of preparation
- ☐ Boundary line of proposed subdivision and existing zoning classifications
- ☐ Total approximate acreage
- ☐ Location, widths, and names of all existing or previously platted streets or other public ways showing type, width, and condition of improvements if any, railroad and utility right-of-way, parks and other public open spaces, permanent buildings and structures, easements, and section and corporate lines within the tract, and to a distance of one hundred feet beyond the tract
- ☐ Location and size of existing sewers, water main culverts, or other underground facilities within the tract, and to a distance of one hundred feet beyond the tract. Such data as grades, invert elevations and locations of catch basins, manholes, and hydrants shall also be shown.
- ☐ Boundary lines of adjoining unsubdivided or subdivided land, within one hundred feet identifying by name and ownership
- ☐ Topographic data, including contours at vertical intervals of not more than two feet, except that contour lines shall be no more than one hundred feet apart. Watercourses, wetlands, wooded areas, rock outcrops, power transmission poles and lines, and other significant features shall also be shown.
- ☐ Layout of proposed streets, showing right-of-way widths and proposed names of streets. The name of any street previously used in the City or its environs shall not be used, unless the proposed street is an extension of an already named street, in which event the name shall be used.
- ☐ Location and widths of proposed alleys, pedestrian ways, and utility easements
- ☐ Typical cross-sections of proposed improvements upon streets and alleys, together with an indication of the proposed storm water runoff
- ☐ Approximate center line gradients of proposed streets and alleys, if any
- ☐ Location, size, and approximate gradient of proposed sewer lines and water mains
- ☐ Layout, numbers, and typical dimensions of lots
- ☐ Minimum front, rear, and side-street building setback lines, indicating dimensions
- ☐ Areas other than streets, alleys, pedestrian ways, and utility easements intended to be dedicated or reserved for public use, including the size of such area or areas in acres
- ☐ Statement of the proposed use of lots, stating type of residential buildings with number of proposed dwelling units, type of business or industry, so as to reveal the effect of development on traffic, fire hazards, or congestion of population
- ☐ Proposed protective covenants
- ☐ Provisions for water supply
- ☐ Provisions for sewage disposal, drainage, and flood control
- ☐ If any zoning changes are contemplated, the proposed zoning plan for the areas, including dimensions

sion's action is usually a recommendation to the governing body.

The city's approval of the preliminary plat gives the developer the assurance that the final plat will be accepted by the city if built to the standards approved in the preliminary plat.

Final Plat Review

During the next step of the process, a final plat is prepared. The final plat typically shows the following information:

- Accurate angular and lineal dimensions for all lines, angles, and curvatures used to describe boundaries, streets, alleys, easements, areas to be reserved for public use, and other important features. Dimensions of lot lines shall be shown in feet and hundredths.
- When lots are located on a curve, or when side lot lines are at angles other than 90 degrees, the width of the building setback line shall be shown.
- An identification system for all lots and blocks.
- True angles and distances to the nearest established street in lines or official monuments (not less than three), which shall be accurately described in the plat.
- Municipal, township, county, or section lines accurately tied to the lines of the subdivision by distances and angles.
- Radii, internal angles, points and curvatures, tangent bearings, and lengths of all arcs.
- Accurate location of all survey monuments.
- Accurate outlines and legal description of any areas to be dedicated or reserved for public use, or for the exclusive use of property owners within the subdivision, with the purposes indicated therein.
- Certification by a registered surveyor in the form required by Minnesota Statutes.
- Execution by all owners of any interest in the land and any holders of a mortgage thereon of the certificate required by Minnesota Statutes, and which certificate shall include a dedication of the utility easements and any other public areas, in such form as shall be approved by the city attorney.
- Certifications showing that all taxes and special assessments currently due on the property to be subdivided have been paid in full.
- Certification that all required improvements have been installed (streets, utilities, etc) or, at the city's discretion, contractual agreements between the developer and the city providing for these have been executed.

In order to receive approval of a final plat, the applicant must demonstrate compliance with the conditions and requirements of preliminary plat approval. Once the governing body has approved a final plat it is filed with the County Recorder, and only at that time do the parcels become recorded and saleable lots.

9 The Meeting

This chapter covers typical items that may come up on a planning commission's agenda:

- **Agenda Action Items**
- **Zoning Amendment (Text and Map)**
- **Conditional/Special Use Permit**
- **Subdivisions**
- **Discussion Items**
- **Commissioner Opportunities**
- **Minutes and Documents**

The meeting agenda is the order of business and the required items of business for a given meeting. It includes general information about the meeting time and location, plus standard items such as roll call, approval of past meeting minutes, new and old business, reports, and so on. It will also include any special actions needed by the body. A sample agenda is provided below:

AGENDA

PLANNING COMMISSION

COMMUNITY ROOM CITY HALL

**12 Main Street
Any City, MN 54000**

October 13, 2010, 7:00 P.M.

1. Roll Call
2. Approval of Minutes of 9/15/10
3. Review Petitions / Public Hearings
 - A. 5th Street Market Rezoning
 - B. Byingtime Salvage Yard CUP
4. Old Business
5. New Business

-
- A. Discussion of Sign Regulations review
 - B. Consider special meeting in November
 - 6. Report of Chairperson
 - 7. Planning Commissioner Items
 - 8. Report of Staff
 - 9. Communications
 - 10. Miscellaneous
 - 11. Adjournment

Additional items may be placed on an agenda by request to the Chairperson and a vote of the Commission. These additional items usually fall under new business.

Agenda Action Items

Certain procedures, such as hearing notices, etc. are often necessary in order to place land use applications on the agenda. The following section discusses various planning issues and the procedures the planning commission should follow.

These items affect land use and require a public hearing, after which the Commission is expected to reach a decision. The primary purpose of a public hearing is to share information about proposed developments, plans, and ordinance amendments with the public, and to give citizens an opportunity to comment on the proposals. Public hearings must be advertised to the public at least ten days in advance of the hearing, and must follow proper procedures. Keep in mind that the 60-day rule must be followed when reviewing zoning applications (see Chapter 7).

Zoning Amendment (Text and Map)

Amendments are changes in district boundaries on the zoning map or in the text of the zoning ordinance. Amendments are necessary in order to meet changing conditions within the community, and should be made only when the amendment is in the public interest and conforms to the Comprehensive Plan. Before recommending an amendment to the ordinance, the planning commission should consider the following conditions:

- A. Has there been a change in circumstance within the city, township, or county?
- B. Has an error been made in the original plan?
- C. Is the proposed change consistent with the land use map and the policies of the Comprehensive Plan?

In dealing with amendments, the Commission should determine if the request could have an impact on adjacent property values and would be compatible with surrounding land uses.

Usually, the Commission selects one of the following options:

- A. Recommend approval of the request
- B. Recommend denial of the request
- C. Table the request (tabling delays the request indefinitely and requires re-notification)
- D. Continue the public hearing to a specific date (done to provide additional time to obtain further information)
- E. Close the hearing and delay action without re-notification.

Conditional/Special Use Permit

Conditional/special uses are those which may be appropriate or desirable but require special approval because they may need more detailed review for issues such as excessive height or bulk, traffic congestion, strain on essential public facilities and services, etc. Conditional/Special uses must be permitted within a zoning district if they meet specified standards and are not detrimental to the district. The ordinance spells out the standards which must be met in order to grant a Conditional/Special Use Permit. In approving a Conditional/Special use, specific conditions may be imposed to ensure that the standards are met.

The Commission selects one of the following options:

- A. Recommend approval of the request with conditions that are tied to the Comprehensive Plan
- B. Recommend denial of the request
- C. Table the request (tabling delays the request indefinitely and requires re-notification)
- D. Continue the public hearing to a specific date (done to provide additional time to obtain further information)
- E. Close the hearing and delay action without re-notification

Subdivisions

A subdivision is the division of land into two or more lots. The Subdivision Ordinance outlines criteria for filing a subdivision application, the review process, design standards, parkland dedications, and basic improvements.

Two types of subdivisions may be reviewed by the Commission.

1. Preliminary Plat: Initial drawings and/or maps of a proposed subdivision
2. Final Plat: Final drawings and/or maps of a subdivision previously reviewed as a preliminary plat

The Commission selects one of the following options:

- A. Recommend approval of the subdivision
- B. Recommend approval of the subdivision with conditions
- C. Recommend denial of the subdivision
- D. Table the subdivision (tabling delays the subdivision indefinitely and requires re-notification)
- E. Continue the public hearing to a specific date (done to provide additional time to obtain further information)

Discussion Items

No action is anticipated on discussion items, and a public hearing is not required. These items can include: sample ordinances, community needs, capital improvements, review of studies, training programs, etc. These items may fall under the agenda heading of New Business, Staff Reports, Communications, or Miscellaneous.

Commissioner Opportunities

The agenda may also provide for a report from the chairperson and planning commissioners' items. This provides an opportunity to discuss personal interests and concerns without mixing these interests into other agenda items. Through this procedure, commissioners can be adequately heard, communication can take place, and there will be due process within the Commission.

Minutes and Documents

The primary planning commission documents include reports from staff or consultants; plans and documents submitted by applicants; documents, statements or exhibits submitted at public hearings; and resolutions adopted by the Commission.

Official records of the Commission, such as minutes and findings, should be maintained in bound books, and an archives file is also desirable.

There should also be a permanent case file maintained for each applicant for each item brought before the Commission. The case file should include:

-
- A. Application
 - B. Plans and documents submitted by the applicant
 - C. Hearing notice and copy of published notice, including a list of persons to whom hearing notices were sent
 - D. Staff reports
 - E. Materials submitted at the hearing
 - F. Reports from other agencies
 - G. Minutes
 - H. Resolutions
 - I. Action by the governing body
 - J. Staff correspondence

The minutes of planning commission meetings should follow the same format as the agenda, and should include:

- A. Attendance
- B. Reference to staff reports
- C. Relevant discussion during public hearings
- D. Motions and seconds
- E. Conditions applicable to motions
- F. Voting record

10 Due Process & Public Hearings

The purpose for holding a public hearing is to ensure due process. Due process ensures that all persons appearing before the planning commission will be treated equally and given the same opportunities. Due process encourages objective decision-making by providing all interested persons a notice and an opportunity to be heard.

Land use issues are frequently contested, and the outcome is often decided based on whether or not the planning commission provided participants due process.

Public hearings must treat all interested participants fairly and equally, provide complete disclosure of what is being proposed to all parties, and provide the applicant and all citizens with the right to have their views and arguments heard. After the hearing, the planning commission must adopt adequate findings of fact to ensure that a court does not overturn the decision.

Due process requires:

1. Adequate notice of public hearings sent to persons within a specified distance of the affected property (as outlined in state statute) and published in the official newspaper of the city/township/county
2. The opportunity to be heard – see Guidelines for Conducting a Public Hearing
3. Findings of fact be adopted to support decision
4. No conflict of interest on the part of planning commissioners
5. Prompt decisions
6. Records of the proceedings (minutes of the meeting)

Provided below is a suggested guide for conducting public hearings. Following a procedure such as this one can help to make hearings more manageable and ensure that those in attendance have an adequate opportunity to address the commission.

Guidelines for Conducting a Public Hearing

1. Everyone who wishes to speak will be allowed to do so.
2. All statements and questions shall be directed to the Chairperson.
3. All statements should be as factual as possible.
4. Please refrain from repeating what has already been said.
5. Do not involve personalities.
6. Before speaking, state your name and address for the recorder.
7. The planning commission reserves the right to question any speaker.
8. Staff shall be permitted to ask questions to clarify motions or items brought out at the hearing.
9. Staff will furnish the planning commission with all pertinent information concerning the request.
10. The applicant and/or his or her representative will then comment on the request.
11. The public will provide comments on the request. The applicant will then have an opportunity to answer questions.
12. All other testimony such as maps, drawings, photos, and soil information will be made part of the hearing record.
13. After the close of the public hearing, no additional testimony may be offered, except those comments in response to questions from the Commission.

It is recommended that a copy of the hearing procedures be posted or distributed to the public prior to the start of the hearing. Doing so helps those in attendance prepare their statements and understand how the process will work.

11

Findings of Fact

This chapter covers findings of fact, including the following:

- **When are Findings Needed?**
- **Valid Findings**
- **Legal Considerations**

The planning commission's decisions must be based on facts submitted at the public hearing and recorded in the minutes. Planning commissioners must always remember that any matter before them could be litigated.

The standard by which the planning commission reviews an agenda item depends on whether it is acting in a legislative or quasi-judicial capacity.

When reviewing a zoning ordinance text amendment or rezoning request, the planning commission is acting under its legislative authority. When operating under this authority, the planning commission's decision is judged on whether it is constitutional, rational, and related to protecting the public health, safety, and welfare of the community. Courts refer to this as the rational-basis standard.

The planning commission is acting in a quasi-judicial capacity when it reviews a variance, conditional use permit, or other similar request. When operating under this authority, the planning commission must apply the facts of the request to the applicable standards in the ordinance. If the request complies with the standards set forth in the ordinance, the planning commission must approve it or recommend approval, depending on the application. If the planning commission denies a request, the reasons must relate to the request's failure to comply with ordinance standards. If the planning commission's decision is challenged, a court will consider whether it cited legally and factually sufficient reasons or whether the decision was arbitrary.

When Are Findings Needed?

The planning commission should adopt Findings of Fact when making a decision or recommendation on a land use application. Under the 60-day rule, the planning commission must cite reasons for denying a "written request related to zoning." (See Chapter 7 for more information on the 60-day rule.)

Findings of fact enable a court to sustain a zoning decision. Generally speaking, a decision will be upheld if the findings of fact demonstrate a rational and legally sufficient basis for decision that is not arbitrary and capricious.

Valid Findings

Valid findings include:

- A. The proposed use is consistent with the Comprehensive Plan, and it will not impede the normal and orderly development and improvement of surrounding vacant property.
- B. The proposed change is consistent with the future or planned land use map.
- C. The proposed zone change is appropriate because an error was made when drawing the original boundaries on the zoning map.
- D. The proposed use will not endanger, injure, or detrimentally affect the use and enjoyment of other property in the immediate vicinity.
- E. With the conditions placed upon it, the proposed project will not contaminate groundwater.
- F. The applicant has established that there are practical difficulties in complying with the zoning ordinance.
- G. Neighbors made numerous comments during the public hearing that the streets in the vicinity are congested and the addition of the proposed use would exacerbate traffic congestion.

The following reasons are not valid bases for findings:

- A. The proposed use is better than what is there now.
- B. The property is vacant now (weed patch, dust blowing, etc.) and this use will improve it.
- C. You can't keep a landowner from using his/her land.
- D. This proposal will bring in more revenue to the city.
- E. The owner can't sell or lease it with the present zoning.
- F. The owner can get more money for the property if it's rezoned.
- G. The neighbors do not like the proposal.

Legal Issues

Without adequate findings of fact, a local government's decision could be overturned or sent back for reconsideration. Courts generally consider the following:

1. Is the law clear in its requirements and expectations for the zoning request?
2. Do the findings of fact represent testimony and information considered at the public hearing?
3. Is there a reasonable connection between the findings of fact, the ordinance(s), and the local government's decision?

12 Parliamentary Procedure

Robert's Rules of Order

Planning Commission proceedings are sometimes conducted in accordance with Robert's Rules of Order to provide for standard procedures, avoid confusion, ensure a fair hearing for everyone, and to protect citizens' rights.

Order of Business

1. Call to order: The Chairperson says, "The meeting will please come to order."
2. Establish a quorum: In order to conduct business legally, a certain number of commissioners must be present. The number for a quorum is stated in the city/county/township ordinance.
3. Approval of Agenda: The meeting agenda is approved, either as presented or as amended.
4. Minutes: The minutes of the previous meeting are approved, either as presented, or as amended.
5. Agenda Items: The Commission works through its agenda of public hearing items, discussion items, training, information, etc.
6. Announcements: Announcements are made.
7. Adjournment: The meeting ends by a vote.

How to Make a Motion

1. To obtain the floor, a commissioner says, "Mr./Madam Chairperson." The Chairperson recognizes the speaker by name.
2. To make a motion, say, "I move that we..."
3. To obtain a second, wait for another commissioner to say, "I second the motion."
4. The Chairperson then says, "It is moved and seconded that we..." He/she then says, "Is there any discussion?" Discussion may now occur. (At this point, your motion has become property of the entire Commission, and you cannot change it without the consent of the Commission.)
5. The Chairperson then asks, "Are you ready for the question?" If yes, he/she says, "All in favor of the motion say 'aye.'" Then, "All opposed, say 'no.'"
6. If a majority of the commissioners vote in favor of the motion, the Chairperson says, "The motion carries." If a majority are opposed, he/she says "The motion is lost (fails)."

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7. To withdraw a motion: Before it has been repeated by the Chairperson, the maker of a motion may withdraw it. After it has been repeated by the Chairperson, the maker may withdraw it, if no one objects.
 8. To amend a motion before a vote has been taken, a motion may be amended by saying, "I move to amend the motion by..." The Commission then votes on the amendment before discussing and voting on the original motion.
 9. To end debate and call for a vote on the motion say, "I move the previous question." After the motion is seconded, the Chairperson says, "Shall the main question be now put?" No discussion is allowed on this motion, and it requires a 2/3 vote to carry. If the motion carries, all debate instantly stops and the Chairperson calls for a vote on the previous question/motion.
 10. To complain about conditions such as heat, noise, etc., say, "I raise a question of privilege." This is a device that permits a commissioner to bring up an urgent matter for consideration immediately. You may interrupt a speaker with this device; you do not need a second; there is no debate, and no vote is taken.

13 Keeping Up With the Changing Field of Planning

The field of planning is not static – it is continually evolving in response to changes in the environment, in federal and state legislation, and in society as a whole. Among the new ideas that have influenced planning and land development in the last few decades are:

Sustainable Development

Sustainable development is a philosophy that can be applied to business, government, and individuals. Under Minnesota Statutes Section 4A.07, Subd. 1(b), sustainable development is defined as, “development that maintains or enhances economic opportunity and community well-being while protecting and restoring the natural environment upon which people and economies depend. Sustainable development meets the needs of the present without compromising the ability of future generations to meet their own needs.”

The State of Minnesota encourages communities to include sustainable development principles in their planning efforts. The following are typical goals for sustainable development:

- Provide a high quality of life for present and future generations.
- Do this without exceeding the environment’s ability to recycle wastes, provide resources and support a rich diversity of life.
- Meet current needs while leaving future generations as many options for resource use and development as possible.

A good source of assistance for Minnesota communities interested in sustainable development is GreenStep Cities, a program of the Minnesota Pollution Control Agency. Minnesota GreenStep Cities is a voluntary challenge, assistance and recognition program to help cities achieve their sustainability goals through implementation of 28 best practices. Each best practice can be implemented by completing one or more specific actions from a list of four to eight actions. These actions are tailored to all Minnesota cities, focus on cost savings and energy use reduction, and encourage innovation. See <http://greenstep.pca.state.mn.us/>.

Smart Growth

The philosophy of “smart growth” focuses on creating compact, walkable neighborhoods that provide a variety of housing and transportation choices, in contrast to “sprawl” development patterns. Smart growth concepts have been widely advocated and adopted in many communities. The U.S. Environmental Protection Agency offers a broad range of resources on smart growth, including the following ten smart growth principles:

1. Mix land uses
2. Take advantage of compact building design
3. Create a range of housing opportunities and choices
4. Create walkable neighborhoods
5. Foster distinctive, attractive communities with a strong sense of place
6. Preserve open space, farmland, natural beauty, and critical environmental areas
7. Strengthen and direct development towards existing communities
8. Provide a variety of transportation choices
9. Make development decisions predictable, fair, and cost effective
10. Encourage community and stakeholder collaboration in development decisions

See www.epa.gov/smartgrowth/about_sg.htm.

New Urbanism

The philosophy of New Urbanism is similar to that of smart growth. However, New Urbanist planners, architects and urban designers place a greater emphasis on design of neighborhoods, districts and corridors, using traditional town and city planning techniques. According to the Congress for the New Urbanism (CNU), “New Urbanism recognizes walkable, human-scaled neighborhoods as the building blocks of sustainable communities and regions.” The CNU concentrates on issues such as design of human-scaled streets, thoroughfares and shared public space, and the promotion of zoning and other codes that foster mixed use rather than sprawl. See www.cnu.org.

Form-Based Codes

Form-based codes are a recent outgrowth of New Urbanism. These codes tend to focus on building form and placement, rather than the uses within buildings. By emphasizing the relationships among buildings, and between buildings and streets or public spaces, it becomes feasible to combine a broader range of land uses, from housing to offices, shops and workshops, that are typically kept

separate under conventional zoning codes. Some proponents of form-based codes tend to demonize conventional zoning, but their approaches are still worth considering as a way to focus attention on urban form. For more information, see the Form-Based Codes Institute website, www.formbased-codes.org.

Planning and Healthy Communities

There is growing interest in the planning field in how land use and transportation planning affect public health. For example, how do street designs affect individual behaviors such as walking or biking? How do development patterns affect these same transportation choices? How does the availability, or lack, of affordable and healthy food affect public health, especially in disadvantaged communities? The local foods movement, as well as public health initiatives such as Active Living Minnesota, are making new connections between planning, food production, and community health. See <http://www.activelivingbydesign.org/category/initiatives/active-living-minnesota> for information about programs in several Minnesota communities.

14

Definitions & Terms

One of the most critical components of any planning discussion or planning document is the definitions of the terminology that is used. When those involved in the process have a shared understanding of the terms being used, communication around those terms can be more productive.

The purpose of this chapter is two-fold: first to provide definitions of some commonly used terms, and second, to provide examples of how zoning terms may vary in how they are defined from community to community.

Commonly Used Terms

ACCESSORY USE: an activity or structure that is incidental or secondary to the principal use or structure on the same site.

AQUIFER: a geologic formation which stores and transmits groundwater to wells and springs.

BUFFER: a strip of land, usually landscaped, located between two different, and in most cases, incompatible land uses.

BUILDABLE AREA: the space remaining on a lot after the setbacks have been met.

CARRYING CAPACITY: the intensity of use which a parcel of land can accommodate without incurring environmental damage.

CLUSTER DEVELOPMENT, CONSERVATION DESIGN: a subdivision plan which places housing units into compact groupings, while providing a network of commonly owned or dedicated open space.

COLLECTOR STREET: a street which carries traffic from local streets to arterials.

COMPREHENSIVE PLAN: a document consisting of a map, identifying land uses and their intensity, text, which contains background information, goals, policies, and a plan for implementation.

CONFLICT OF INTEREST: any direct contractual, pecuniary or other beneficial interest in the outcome of a matter before the Commission.

DEDICATION: private land which the owner turns over for public use, such as: parks, roads, etc.

DENSITY: the average number of dwelling units per unit of land (acre).

DOWN ZONING: changing a district from a higher to a lower use, e.g. from commercial to residential use.

EASEMENT: a limited right to use property owned by someone else for such purposes as utility facilities or drainage.

ENVIRONMENTAL ASSESSMENT WORKSHEET (EAW): a brief assessment of a project to determine potential significant environmental effects and the need for Environmental Impact Statement.

ENVIRONMENTAL IMPACT STATEMENT (EIS): an analysis and evaluation of the potential effects of a project on the environment.

FLOOD PLAIN: the area adjoining a watercourse which has been, or may be, covered by flood waters.

GREEN ACRES LAW: a state law authorizing a system of deferred taxes for land defined as agricultural land.

HIGHEST AND BEST USE: the use of property that will bring its owner maximum profit. It is a real estate concern which does not take into account the impacts of such use on other properties. Zoning regulations may limit the use of a property in order to minimize negative impacts to other properties or to the general public. Such limits may provide the property owner less than maximum profit, thus providing less than highest and best use.

IMPERVIOUS SURFACE: any material which reduces or prevents the infiltration of stormwater.

IMPROVED LAND: land that has been improved with facilities such as sewers, water lines or roads.

INFRASTRUCTURE: the basic framework of improvements and facilities on which continuance and growth of a community depends, such as roads, water and sanitary sewer lines, storm sewers, communication, systems, schools, etc.

LANDLOCKED: a parcel of land which does not have frontage on a public street or right of way.

LAND USE PLAN: that part of a Comprehensive Plan which deals with the relationship between the different land uses, and serves as a guide to decisions regarding zoning and development.

METES AND BOUNDS: a system of describing and identifying land by measures (metes) and direction (bounds) from an identifiable point of reference such as a monument or marker, or other permanent features.

NONCONFORMING STRUCTURE OR USE: a use of a land or structure lawfully existing before the adoption of a zoning ordinance, or the amendment of the zoning ordinance, making the use or structure inconsistent with the current official controls as written.

OFFICIAL MAP: a map which displays the public improvements plan adopted by the governing body.

PERFORMANCE STANDARDS: regulations which provide specific criteria governing the operation of a land use.

PERCOLATION (PERC) TEST: a measurement of the rate of seepage of water in soil to determine the suitability of different soils for development, especially for septic tanks and drainfields.

PLAT: a map or drawing which graphically delineates the boundary of a land parcel for identification and record of title. A recorded legal document with the County Recorder.

QUORUM: the number of commissioners that must be present to legally conduct business.

SETBACK: the minimum horizontal distance between a structure and a lot line, road, highway or high water mark.

SPOT ZONING: rezoning of a small area for higher intensity use than the surrounding land, not in accordance with the Comprehensive Plan.

TAKING: a Zoning Ordinance may be found to be unreasonable, discriminatory or confiscatory if it “takes” property without due process of law or denies equal protection of the laws. Such an ordinance violates the 14th Amendment to the Constitution of the United States, as well as the Minnesota Constitution. A land owner must be paid compensation for a taking.

WATERSHED: the area drained by a river, stream, lake or other body of water.

WETLANDS: low-lying, waterlogged or shallow water lands such as bogs, swamps and marshes which play an important role in the hydrologic cycle and also serve as wildlife habitat.

ZERO LOT LINE: the location of a building on a lot in such a manner that one or more of the building’s sides lies directly on a lot line.

ZONING: the practice of designating permitted uses of land and standards for development based on mapped zones which separate one set of land uses from another.

Zoning Definition Comparisons

The definition of terms in the zoning ordinance plays a key role in interpreting provisions and requirements. The following examples show how what may seem to be commonly understood terms can take on a different and often more specific meaning in the zoning ordinance.

Lot

Webster's New Collegiate Dictionary: A portion of land; a measured parcel of land having fixed boundaries and designated on a plat or survey.

From a County Ordinance: For zoning purposes, as covered by this ordinance, a lot is a parcel of land designated by plat, metes and bounds, registered land survey, auditors subdivision or other accepted means and separate from other parcels or portions by said description and of at least sufficient size to meet minimum zoning requirements for use, coverage, and area, and to provide such yards and other open spaces as are herein required. Such lot shall have frontage or access on a public street or road or body of water.

From a City Ordinance: Land occupied or to be occupied by a building, land use or group of buildings together with such open spaces or yards as are required by this ordinance and having its principal frontage on a public street.

Family

Webster's New Collegiate Dictionary: a group of individuals living under one roof and usually under one head.

A County Ordinance: One or more persons occupying a single housekeeping unit and using common cooking facilities.

A City Ordinance: An individual, or two (2) or more persons related by blood, marriage or adoption, or a group of not more than four (4) persons not so related, living together as a single housekeeping unit using common cooking and kitchen facilities.

Sign

Webster's New Collegiate Dictionary: A lettered board or other display used to identify or advertise a place of business.

A County Ordinance: Any written announcement, declaration, demonstration, display, illustration, insignia or illumination used to advertise or promote the interest of any person, when the same is displayed or placed out-of-doors in view of the general public and shall include every detached sign.

A City Ordinance: Any letter, work, symbol, model, printed, projected, or affixed device, poster, picture, reading matter, or other representation in the nature of an advertisement, announcement, direction, or informative device including structural and component parts, that is located outdoors and is larger than one (1) square foot in area.

The American Planning Association has compiled a good listing of zoning definitions in a report titled *Planners Dictionary* (PAS 521/522) (available from APA, at www.planning.org/apastore).

Appendix

On-Line Resources

There is a wealth of information available to citizen planners via the Internet. If you do not have access to the Internet at home or at your local government offices, check with your local library. Most county extension offices also provide Internet access.

American Planning Association: This site is geared towards providing services and resources to both professional and citizen planners. Check out the Planning Advisory Service and the Publications links. <http://www.planning.org>

Cyburbia: Internet Resources for the Built Environment: A site hosted at the University of Buffalo providing searches for links to articles on many planning topics, plus sample ordinances. <http://www.cyburbia.org/>

Minnesota State Statutes: You can find complete up-to-date versions of planning legislation at this site hosted by the Minnesota Revisor of Statutes. <http://www.leg.state.mn.us/leg/statutes.htm>

- City enabling Legislation
- County enabling legislation
- Township enabling legislation

Law of the Land: A blog maintained by Patricia Salkin, professor of law at the Albany Law School, Albany, New York that provides land use case law summaries from around the United States. <http://lawoftheland.wordpress.com>

League of Minnesota Cities: A great resource for general information on planning and zoning, including the Handbook for Minnesota Cities and other guides. <http://www.lmc.org>

Planning Commissioner's Journal: This is an online version of this popular journal. Many of the resources here require a subscription to the journal, or can be read online, but not printed. <http://www.plannersweb.com>



Land Use Variances

Published: May 21, 2021

See accompanying model documents below.

This content conveys general information. Do not use it as a substitute for legal advice. Any attorney general opinions cited are available from the League's Research staff.

What is a variance?

A variance is a way that cities may allow an exception to part of a zoning ordinance. It is a permitted departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

Sometimes a landowner seeks a variance to allow a use of their property that is not permissible under the zoning ordinance. Such variances are often termed “use variances” as opposed to “area variances” from dimensional standards. Use variances are not generally allowed in Minnesota. State law prohibits a city from permitting by variance any use that is not permitted under the ordinance for the zoning district where the property is located ([Minn. Stat. § 462.357, subd. 6](#)).

Granting a variance

Minnesota law provides for a body called the board of adjustment and appeals to hear requests for variances ([Minn. Stat. § 462.357, subd. 6](#)). In many smaller communities, the planning commission or even the city council may serve that function. A variance decision is generally appealable to the city council.

A city may grant a variance if enforcement of a zoning ordinance provision, as applied to a particular piece of property, would cause the landowner “practical difficulties.” For the variance to be granted, the applicant must satisfy the statutory three-factor test for practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). If the applicant does not meet all three factors of the statutory test, the city should not grant the variance. Also, variances are only permitted when:

- They are in harmony with the general purposes and intent of the ordinance, and
- The terms of the variance are consistent with the comprehensive plan.

Legal standards

When considering a variance application, a city exercises “quasi-judicial” authority. This means the city acts like a judge in evaluating the facts against the legal standard. The city's role is limited to applying the legal standard of practical difficulties to the facts presented by the application. If the applicant meets the standard, then the city may grant the variance.

In contrast, when the city writes the rules in the zoning ordinance, the city is exercising “legislative” authority and has much broader discretion.

Practical difficulties

“Practical difficulties” is a legal standard that cities must apply when considering applications for variances. It is a three-factor test and applies to all requests for variances. To constitute practical difficulties, all three factors of the test must be satisfied.

Reasonableness

The first factor is that the property owner proposes to use the property in a reasonable manner.

This factor means that the landowner would like to use the property in a particular reasonable way but cannot do so under the rules of the ordinance.

It does not mean that the land cannot be put to any reasonable use whatsoever without the variance. For example, if the variance application is for a building too close to a lot line or does not meet the required setback, the focus of the first factor is whether the request to place a building there is reasonable.

Uniqueness

The second factor is that the landowner’s problem is due to circumstances unique to the property not caused by the landowner.

The uniqueness generally relates to the physical characteristics of the particular piece of property, that is, to the land and not personal characteristics or preferences of the landowner.

When considering the variance for a building to encroach or intrude into a setback, the focus of this factor is whether there is anything physically unique about the particular piece of property, such as sloping topography or other natural features like wetlands or trees.

Essential character

The third factor is that the variance, if granted, will not alter the essential character of the locality.

Under this factor, consider whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

For example, when thinking about the variance for an encroachment into a setback, the focus is how the particular building will look closer to a lot line and if that fits in with the character of the area.

Undue hardship

“Undue hardship” was the name of the three-factor test prior to a May 2011 change of law (2011 Minn. Laws, ch. 19, amending Minn. Stat. § 462.357, subd. 6).

The 2011 law restored municipal variance authority in response to a Minnesota Supreme Court case (Krummenacher v. City of Minnetonka, 783 N.W.2d 721 (Minn. June 24, 2010)). The law now does both of the following:

- Provides consistent statutory language between city land use planning statutes (Stat. § 462.357, subd. 6) and county variance authority (Minn. Stat. § 394.27, subd. 7).

- Clarifies that conditions may be imposed on granting of variances if those conditions are directly related to, and bear a rough proportionality to, the impact created by the variance.

The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of

- reasonableness
- uniqueness
- essential character

The League has developed models that reflect current variance law. Your city attorney should review these models with you prior to council action to tailor them for your city’s needs.

- [View the League model ordinance on issuance of a zoning variance \(doc\).](#)
- [View the League model variance application form \(doc\).](#)
- [View the League model resolution adopting findings of fact \(doc\).](#)

Other considerations

Harmony with other land use controls

State law says, “Variances shall only be permitted when they are in harmony with the general purposes and intent of the ordinance and when the terms of the variance are consistent with the comprehensive plan” ([Minn. Stat. § 462.357, subd. 6](#)). This is in addition to the three-factor practical difficulties test. So, a city evaluating a variance application should make findings on whether:

- The variance is in harmony with the purposes and intent of the ordinance.
- The variance is consistent with the comprehensive plan.
- The proposal puts the property to use in a reasonable manner.
- There are unique circumstances to the property not created by the landowner.
- The variance, if granted, will alter the essential character of the locality.

For more about findings of fact, see *Taking the Mystery out of Findings of Fact*

Economic factors

Sometimes landowners insist they deserve a variance because they have already incurred substantial cost. They may also argue they will not receive expected revenue without the variance. State statute specifically notes that economic considerations alone cannot create practical difficulties ([Minn. Stat. § 462.357, subd. 6](#)). Rather, practical difficulties exist only when the three statutory factors are met.

Neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a variance request.

While city officials may feel their decision should reflect the overall will of the residents, their task is limited to evaluating how the variance application meets the statutory practical difficulties factors.

Residents can often provide important facts to help the city address these factors, but unsubstantiated opinions and reactions to a request are not a legitimate basis for a variance decision. If neighborhood opinion is a significant basis for the variance decision, it could be overturned by a court if challenged.

Conditions

A city may impose conditions when it grants a variance. Conditions must be directly related to and bear a rough proportionality to the impact created by the variance (Minn. Stat. § 462.357, subd. 6). For instance, if a variance is granted to exceed a height limit, any conditions attached should presumably relate to lessening the effect of excess height.

Variance procedural issues

Public hearings

Minnesota statute does not clearly require a public hearing before a variance is granted or denied. Many practitioners and attorneys agree that the best practice is to hold public hearings on all variance requests. A public hearing allows the city to establish a record and elicit facts to help determine if the application meets the practical difficulties factors.

Past practices

While past practice may be instructive, it cannot replace the need for analysis of all three of the practical difficulties factors for each and every variance request. In evaluating a variance request, cities are not bound by decisions made for prior variance requests. If a city finds it is issuing many variances to a particular zoning standard, the city should consider amending the ordinance to change the standard.

Time limit

A written request for a variance is subject to Minnesota's 60-day rule. It must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval (Minn. Stat. § 15.99).

Documentation

Whatever its decision, a city should create a record that supports it.

If denying the variance, the 60-day rule requires the reasons for the denial be put in writing within the statutory time period (Minn. Stat. § 15.99, subd. 2). Even if the variance is approved, a written statement explaining the decision is advisable.

The written statement should address each of the three practical difficulties factors and list the relevant facts and conclusions for each factor.

For more about findings of fact, see *Taking the Mystery out of Findings of Fact*

Variances once granted

A variance is a property right that "runs with the land." That is, it attaches to and benefits the land and is not limited to a particular landowner. A variance is typically filed with the county

recorder. Even if the property is sold to another person, the variance applies.

Models used in this discussion:

- [Issuance of Variances](#), LMC model ordinance (doc)
 - [Variance Application](#), LMC model form (doc)
 - [Adopting Findings of Fact](#), LMC model resolution (doc)
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Land Use Conditional Use Permits

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Conditional use

A conditional use is a land use the city permits in a zoning district only when the applicant meets certain standards. The zoning ordinance typically sets out:

- General standards that apply to all conditional uses, and
- Specific standards that apply to a particular conditional use in a given zoning district.

A use is typically conditional because of:

- Hazards inherent in the use itself, or
- Special problems that its proposed location may present.

For example, cities often designate uses that generate traffic (such as family child care, service stations, convenience stores, or drive-thrus) as conditional uses.

Conditional use permit

A conditional use permit (CUP) is a document. A city issues a permit to allow a conditional use when the applicant meets the general and specific ordinance standards. The permit allows the use only if the applicant addresses the standards set forth in the zoning ordinance. State law authorizes conditional use permits ([Minn. Stat. § 462.3595](#)).

General CUP standards

A zoning ordinance typically details general standards that apply to all conditional uses. For example, an ordinance might require all conditional uses to conform to the comprehensive land use plan of the community, be compatible with adjoining properties, and be served by adequate roads and public utilities.

Specific CUP standards

Many zoning ordinances will also set out specific standards for a particular conditional use, such as businesses operating a drive-thru. Specific standards often address off-street parking and loading areas, landscaping and site plan, and hours of business operation.

Granting conditional use permits

Generally, cities may only grant CUPs for uses specifically listed in the zoning ordinance as conditional uses in a particular zoning district.

If a use is not designated as a conditional use in a zoning district, then arguably the city may not issue a CUP without first amending the zoning ordinance to provide for the conditional use. This would, of course, allow other applicants to apply for a conditional use permit under the same standards.

Who grants a CUP

Planning commissions often first consider the CUP application and make recommendations to the city council. State statute allows the city council to assign its CUP approval to another authority. Some cities designate the planning commission as the approving body but typically the city council approves a CUP.

Required approval

If a proposed conditional use satisfies both the general and specific standards set out in the zoning ordinance, the applicant is entitled to the conditional use permit. If the applicant meets all the ordinance standards, the city usually has no legal basis to deny the CUP.

60-Day rule

A written request for a CUP is subject to Minnesota's 60-day rule. It must be approved or denied within 60 days of the time it is submitted to the city. A city may extend the time period for an additional 60 days, but only if it does so in writing before expiration of the initial 60-day period. Under the 60-day rule, failure to approve or deny a request within the statutory time period is considered an approval ([Minn. Stat. § 15.99](#)).

Other conditions on permits

A city may attach reasonable conditions relating to the ordinance standards to a CUP based upon factual evidence contained in public record. For example, if a zoning ordinance says a conditional use should not have adverse visual or noise impacts on any adjacent property, a city might require specific screening and landscaping conditions to address any potential impacts established in the record.

Time limits not permitted

State statute says a CUP remains in effect as long as the conditions agreed upon are observed ([Minn. Stat. § 462.3595, subd. 3](#)). The attorney general says time limits, such as sunset provisions or automatic annual review, are not consistent with state law, explaining that cities may not enact or enforce provisions that allow a city to terminate CUPs without regard to whether the conditions agreed upon are observed (A.G. Op. 59-A-32 (February 27, 1990)).

If a city wishes to place time constraints on particular uses, the appropriate zoning tool is an interim use permit, not a conditional use permit. State law authorizes interim use permits for:

- A temporary use of property until a particular date;
- Until the occurrence of a particular event; or
- Until zoning regulations no longer permit it ([Stat. § 462.3597](#)).

Public hearings

The city may allow a proposed conditional use only after a statutorily required public hearing ([Minn. Stat. § 462.3595, subd. 2](#)). The city must provide published notice of the time, place, and

purpose of the hearing on a proposed CUP at least 10 days prior to the day of the hearing. If the decision affects an area of five acres or less, the city may need to mail notice to property owners within a 350-foot radius of the land in question. The purpose of the public hearing is to help develop a factual record as to whether the applicant meets the relevant ordinance standards such that the CUP should be granted ([Minn. Stat. § 462.357, subd. 3](#)).

City role in hearing

A city exercises “quasi-judicial” authority when considering a CUP application. This means the city’s role is limited to applying the standards in the ordinance to the facts presented by the application. The city acts like a judge in evaluating the facts against the standards. If the applicant meets the standards, then the CUP should be granted.

In contrast, when the city designates certain uses as conditional in the zoning ordinance the city is exercising “legislative” authority and has much broader discretion.

[Learn more about conducting public hearings in the League’s Zoning Guide for Cities](#)

Role of neighborhood opinion

Neighborhood opinion alone is not a valid basis for granting or denying a CUP. While city officials may feel their decision should reflect the overall preferences of residents, their task is limited to evaluating how the CUP application meets the ordinance standards. Residents can often provide important facts to help the city address whether the application meets the standards, but unsubstantiated opinions and reactions to an application are not a legitimate basis for a CUP decision. If neighborhood opinion serves as the sole basis of the decision, it could be overturned by a court if challenged.

Documentation of hearing

Whatever its decision, a city should create a record that will support it. If a city denies a CUP application, the 60-day rule requires the reasons for the denial be put in writing. Even if a city approves a CUP, a written statement explaining the decision is advisable. The written statement should address the general and specific ordinance standards and explain the relevant facts and conclusions.

[For information on creating a record, see *Taking the Mystery Out of Findings of Fact*](#)

Conditional use permit after issuance

A conditional use permit is a property right that “runs with the land.” That is, it attaches to and benefits the land and is not limited to a particular landowner ([Minn. Stat. § 462.3595, subd. 3](#)). State statute requires CUPs be recorded with the county recorder’s office ([Minn. Stat. § 462.3595, subd. 4](#)). When the property is sold, the new landowner will have the continued right to the CUP so long as the conditions are met.

A city can revoke a conditional use permit if there is not substantial compliance with conditions. The revocation must be based upon factual evidence, after appropriate notice and hearing. Because a CUP is a property right, a city should work closely with the city attorney if considering a CUP revocation.

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