



## PLANNING COMMISSION AGENDA

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**April 3, 2017**  
**7:00 pm**

1. **CALL TO ORDER -**
2. **PLEDGE OF ALLEGIANCE –**
3. **OATH OF OFFICE**
  - A. Kris Kopitzke
4. **ROLL CALL -**
  - Barbara Ronningen (Chair)
    - a) Sally Doherty
    - b) Kris Kopitzke
    - c) Mark Nelson
    - d) Judy Seeberger
    - e) Lucia Wroblewski
    - f) Scott Patten
    - g) Jim Langan
    - h) Roger Bowman
5. **APPROVAL OF AGENDA –**
6. **APPROVAL OF MINUTES -**
  - A. January 9, 2017 Meeting Minutes – These have not been approved because the February 6 meeting was cancelled.
  - B. March 6, 2017 Meeting Minutes -
7. **REPORTS AND PRESENTATIONS – None**
8. **PUBLIC HEARINGS –**
  - A. Merv Junker and Kelly Naugle Application for Minor Subdivision for a Lot Line Rearrangement at 1171 Manning and the Parcel with PID# 07.028.20.21.0002
9. **NEW BUSINESS –**
  - A. Role of the Planning Commission
  - B. 2017 Meeting Schedule – Reschedule July 3 Planning Commission Meeting
10. **OLD BUSINESS -**
  - A. Ordinance Amendment Eliminating “Storage Enclosed and Screened Principal Use” from the List of Allowed Uses in the I1A and I1B Zoning Districts
  - B. Comprehensive Plan Update Process
    1. Identification of Issues for Review in Each Section of the Plan

a. Solar Access

C. Update on City Council Actions – Council Highlights from the March 21, 2017 Council meeting are attached.

**11. ADJOURN –**

-- This agenda is not exclusive. Other business may be discussed as deemed necessary. --

**A quorum of the City Council or Other Commissions may be present to receive information.**

CITY OF AFTON  
DRAFT PLANNING COMMISSION MINUTES  
January 9, 2017

1  
2  
3  
4  
5 1. **CALL TO ORDER** – Chair Barbara Ronningen called the meeting to order at 7:00 p.m.

6  
7 2. **PLEDGE OF ALLEGIANCE** – was recited.

8  
9 3. **ROLL CALL** – Present: Kopitzke, Seeberger, Bowman, Patten, Nelson, Chair Ronningen, Doherty arrived  
10 at 7:03 p.m. and Wroblewsky arrived at 7:06 p.m. **Quorum present.** Excused Absence: Langan.

11  
12 **ALSO IN ATTENDANCE** –City Administrator Ron Moorese.

13  
14 4. **APPROVAL OF AGENDA** –

15 Ronningen suggested that item 9.A.1 be moved up to be item 6.A.

16 **Motion/Second: Patten/Kopitzke. To approve the January 9, 2017 Planning Commission agenda as**  
17 **amended. Motion carried 6-0-0.**

18  
19 5. **APPROVAL OF MINUTES** –

20 A. December 5, 2016 Planning Commission Meeting Minutes –

21 **Motion/Second: Nelson/Patten. To approve the December 5, 2016 Planning Commission Meeting**  
22 **minutes as presented. Motion carried 6-0-0.**

23  
24 6. **REPORTS AND PRESENTATIONS** –

- 25 A. Chris Eng, Washington County Economic Development Director presentation regarding desired  
26 uses in the Industrial Zones – Chris Eng provided information regarding the feasibility and  
27 benefits of attracting data center and high-tech and medical uses to the Industrial Zones. These  
28 uses do not generate large traffic volumes, create quality jobs and are clean and attractive uses.  
29 He gave examples of data center uses in other cities and a data center use that is looking to locate  
30 in the metro area.

31  
32 The Planning Commission members asked Mr. Eng if the lack of municipal water and sewer  
33 service would limit the types of uses that would work in Afton's Industrial Zones.

34  
35 Mr. Eng indicated it would not limit the ability of a data center to locate in Afton.

36  
37 Ronningen expressed a concern about the lack of broadband service and its impact on a potential  
38 data center use.

39  
40 Mr. Eng indicated that, if a data center was planning to locate in Afton, the broadband providers  
41 would be very interested in extending broadband service to the data center.

42  
43 7. **PUBLIC HEARINGS** –

44 A. **Marcus and McLaurin Variance Application at 4270 River Road** –

45  
46 Ronningen opened the public hearing at 7:24 p.m.

47  
48 Moorese provided an outline of the application, indicating the property currently has a two-story house that is  
49 substandard in terms of its setback from River Road and its setback from the Ordinary High Water Line of the St.  
50 Croix River. The house backs up to a long steep slope. The house meets the setback from the St. Croix River  
51 bluffline. The applicants are proposing to remodel and construct an addition to the existing house. The addition  
52 is proposed to be constructed on the south side of the existing house, in the location of an existing deck above the  
53 existing garage. The proposal does not require grading and does not change the setbacks of the house. The  
54 house is connected to the "201" community septic system, so that a septic drainfield is not required. The addition  
55 and remodel require a variance to front yard setback and a variance to ordinary High Water Line (OHW) setback.  
56 Moorese also indicated that, while the applicant's surveyor used the 692.5 elevation as the OHW, the DNR's

57 official OHW for structures is 675. It appears that the existing house may meet the OHW setback using the 675  
58 elevation. Moose suggested the confirmation of the OHW setback be made an additional condition of approval.  
59 The other recommended conditions of approval were as follows:

- 60 1. House color shall be earth tone
- 61 2. City review and approve retaining wall design if replacement is needed
- 62 3. The house shall be constructed according to the plans dated December 8, 2016, subject to revisions as  
63 required or approved by the City.
- 64 4. Existing vegetative screening shall be maintained, with the exception of the removal of one arborvitae  
65 immediately adjacent to the garage.
- 66 5. The two separate parcels that make up the property at 4270 River Road shall be combined.

67  
68 Jan Woodfill, of 4242 River Road indicated she had no objections to the proposal.

69  
70 John Barbour, the applicant's architect, indicated he and the applicant had worked hard to fit the house into the  
71 neighborhood.

72  
73 Tom Gasser, owner of 4220 River Road, indicated he had no concerns regarding the proposal.

74  
75 Motion/Second: Patten/Doherty. To close the public hearing at 7:30 p.m. Motion carried 8-0-0.

76  
77 Bowman questioned why the one tree was being removed.

78  
79 Barbour responded that the tree overhangs the proposed addition.

80  
81 **Motion/Second: Wroblewski/Doherty to recommend approval of the variance application with the staff's**  
82 **recommended conditions.**

83  
84 Moose indicated the Commission needs to include the findings on which the recommendation is based.

85  
86 The following findings were added to the motion:

- 87 1. The proposal would not make the property or house more substandard than it currently is.
- 88 2. There is no change to the existing setbacks
- 89 3. The special conditions that are causing the need for the variance were not caused by the property owner
- 90 4. The proposal does not disrupt the natural vegetation
- 91 5. The DNR is supportive of the proposal
- 92 6. The site is a unique and difficult one, with a step bluff directly to the rear of the house.

93  
94 **The motion carried 8-0-0.**

95  
96 **B. Ordinance Amendment Eliminating "Storage Enclosed or Screened Principal Use" from the list of**  
97 **allowed uses in the I1A and I1B Zoning Districts –**

98  
99 Ronningen opened the public hearing at 7:37 p.m.

100 Moose provided background information regarding the ordinance amendment. The Council, at its November 15,  
101 2016 meeting, referred to the Planning Commission the review of the allowed uses in the Industrial zones,  
102 including the elimination of Storage Enclosed or Screened Principal Use as an allowed use in the Industrial zones.  
103 The proposed ordinance amendment reflects the elimination of this use.

104 There were no public comments.

105 **Motion/Second: Nelson/Wroblewski. To close the public hearing at 7:39 p.m. Motion carried 8-0-0.**

106 Bowman questioned the language of the ordinance amendment, as it would eliminate both storage enclosed and  
107 storage screened. It was his understanding that only storage screened was to be eliminated.

108  
109 Moose indicated he would review the ordinance language and the zoning code and revise the language to reflect  
110 the Council's direction.

111  
112 **Motion/Second: Ronningen/Bowman. To continue the ordinance amendment to the February 6, 2017**  
113 **Planning Commission meeting to enable the ordinance language to be clarified to eliminate only storage**  
114 **screened and not storage enclosed. Motion carried 8-0-0.**

115  
116 C. Ordinance Amendment Regarding Sec. 12-132. B.3. Contiguous Parcels under Common  
117 ownership-

118  
119 Ronningen opened the public hearing at 7:43 p.m.

120  
121 Moose provided background regarding the ordinance amendment. He indicated the Zoning Code includes  
122 regulations requiring that when two or more contiguous parcels are under common ownership and any individual  
123 parcel does not meet the full lot width and area requirements the parcel needs to be combined with the adjacent  
124 parcels to create a lot that meets the lot width and area requirements. The purpose of the language in Subsection  
125 (B) (3) is to prevent parcels that do not meet the minimal requirements for lot width and area from being individually  
126 buildable or saleable when they are under common ownership with contiguous lot(s).

127  
128 At its November 15, 2016 regular meeting, the Council agreed that the area and frontage requirements for  
129 contiguous lots under common ownership should be the same as for all other lots, which are set out in Subsection  
130 (B) (2). In addition, the Council agreed that contiguous lots under common ownership that do not meet these  
131 requirements should be required to be combined.

132 At its December 5, 2016 meeting, the Planning Commission expressed concern regarding how the ordinance  
133 language is applied to a parcel with an existing house. In response, the Council added language to the ordinance  
134 amendment as shown below in bold to clarify this.

135 3. If in a group of two or more contiguous lots or parcels of land owned or controlled by the  
136 same person, any individual lot or parcel does not meet the full width or area requirements of  
137 this Article Subsection (B) (2) of this Section, such individual lot or parcel cannot be considered  
138 as a separate parcel of land for purposes of sale or development, but must be combined with  
139 adjacent lots or parcels under the same ownership so that the combination of lots or parcels will  
140 equal one or more parcels of land each meeting the full lot width and area requirements of this  
141 Article Subsection (B) (2) of this Section, **with the exception of a pre-existing legally non-**  
142 **conforming lot containing an existing residence, as long as the residence continues to**  
143 **qualify as an existing legally non-conforming structure.**

144  
145 Ronningen asked for comments from the public. There were none.

146  
147  
148 **Motion/Second: Patten/Kopitzke. To close the public hearing at 7:48 p.m. Motion carried 8-0-0.**  
149

150 Nelson suggested that the language in subparagraph 2 that refers to a lot that contains at least “2 1/2 acres” should  
151 be clarified by revising it to “2-1/2 acres”.

152  
153 Bowman asked what the ordinance amendment is supposed to accomplish. He indicated the City should not be  
154 taking away property rights.

155  
156 Moose responded that the current ordinance language already restricts property rights. The purpose of the proposed  
157 ordinance amendment is to provide less restrictive language than the current ordinance language.

158  
159 Kopitzke expressed concern that, in a neighborhood of nonconforming lots, a property owner who happened to own  
160 two of the lots would be treated differently than all of the other property owners in the neighborhood.

161  
162 Doherty indicated that since the proposed ordinance makes the existing ordinance less restrictive, the Commission  
163 should move forward with the proposed language now and address the broader ordinance at a future time.

164  
165 **Motion/Second: Doherty/Nelson. To recommend approval of the ordinance amendment as written.**  
166 **(Nelson seconded the motion for discussion.)**

167  
168 Nelson questioned whether the proposed ordinance does exactly what the Council wants it to do – does the exception  
169 for a nonconforming lot with an existing house accomplish what the Council is intending? He questioned whether  
170 the Council actually wanted to provide an exception for a nonconforming lot with a residence adjacent to a vacant  
171 nonconforming lot under the same ownership.

172  
173 Moose indicated that a parcel containing a house is a legally buildable lot.

174  
175 The Commission discussed that the City does have the authority to require a nonconforming lot with a house to be  
176 combined with an adjacent vacant parcel under the same ownership. This would make the nonconforming lot with  
177 the house a conforming lot or at least more conforming.

178  
179 Doherty indicated she believed the Council’s intent was to make an exception where two adjacent nonconforming  
180 lots, each with an existing house, are under the same ownership, because requiring two lots, each with a house, to  
181 be combined would cause other zoning problems.

182  
183 Ronningen called for a vote on the motion.

184  
185 **The motion was defeated 8-0-0.**

186  
187 Doherty suggested tweaking the exception language so that no two lots, each with a house, would be required to be  
188 combined.

189  
190 **Motion/Second: Doherty/Nelson. To recommend approval of the ordinance amendment with the following**  
191 **revised exception language: “In the case of two contiguous existing nonconforming lots under common**  
192 **ownership, each containing an existing residence, these lots will be excepted from this subparagraph, as**  
193 **long as the residences continue to qualify as existing legally nonconforming structures.” Motion carried 7-**  
194 **1-0. (Ronningen)**

195  
196 **8. NEW BUSINESS –**

197 **A. Ordinance Integrating Minimal Impact Design Standards into the Zoning Code. – Administrator Moose**  
198 **provided background regarding the integration of Minimal Impact Design Standards into the Zoning Code, and**  
199 **outlined responses to questions and concerns that had been raised by the Planning Commission.**

200  
201 Mike Isensee, Middle St. Croix Water Management Organization (MSCWMO) Administrator, who was involved  
202 in the review of the City's Zoning Code and the integration of the MIDS into the Zoning code, outlined the  
203 background of MIDS and its value.  
204

205 Ronningen asked how many development projects in Afton the MSCWMO has reviewed in the last five years,  
206 why the MSCWMO is promoting this and why it is needed when the Valley Branch Watershed District already  
207 uses the MIDS requirements.  
208

209 Isensee responded that the MSCWMO does not have the authority to have its own standards so it is important that  
210 its cities have strong stormwater management standards. The updated ordinance would provide clear standards at  
211 the point where a developer is beginning to develop a proposed plan. Because the ordinance would be consistent  
212 with the Valley Branch Watershed District (VBWD) standards, the developer would be able to take the  
213 stormwater requirements into account at the earliest point of the development planning process. Isensee also  
214 indicated that the MSCWMO has not reviewed any development projects in Afton in the past five years.  
215

216 Ronningen indicated developers have planners who would be familiar with the City's standards as well as the  
217 VBWD standards. She also indicated that the Minnesota Pollution Control Agency (MPCA) information  
218 indicates the adoption of MIDS is voluntary, but the City is getting pressure to adopt MIDS.  
219

220 Isensee indicated Afton was offered the opportunity to participate in the grant program to assist cities in  
221 integrating MIDS into its zoning code, and the Afton City Council adopted a resolution to participate in the  
222 program.  
223

224 Bowman indicated his fear is that if the City adopts MIDS it will be a foot in the door to change Afton's rural  
225 character. He indicated it is incredulous that the City would want its stormwater regulations to be the same as in  
226 Woodbury, which has a totally different type of development.  
227

228 Isensee indicated that MIDS is only related to stormwater management and does not change other areas of zoning  
229 regulations such as impervious coverage, density, etc.  
230

231 Patten asked Mr. Isensee how many of the 13 cities who had the opportunity to adopt MIDS through the  
232 MSCWMO grant program have adopted MIDS.  
233

234 Isensee indicated that 8 of the 13 cities have adopted MIDS. He also explained the reasons why the other cities  
235 have not adopted MIDS. The City of Stillwater is split between the Brown's Creek Watershed District and the  
236 Middle St. Croix Water Management Organization, and Brown's Creek has not adopted MIDS. Brown's Creek is  
237 doing a rule revision in 2017 and is looking at using Cold Stream Fisheries stormwater standards for those areas  
238 that drain directly to a trout stream and MIDS for all other areas. In the City of Forest Lake, the Watershed  
239 District's standards did not mesh well with MIDS, but they are looking at rule revisions to enable the MIDS  
240 standards to work. Washington County was going to adopt MIDS for the Townships in which the County had  
241 land use authority, but the County is transitioning the land use authority to the Townships and recommending that  
242 the Townships adopt MIDS.  
243

244 Patten indicated he has a concern that, while the City currently relies on its engineering consultant to keep up to  
245 date on stormwater management requirements and standards, if the City adopted the specific performance  
246 standards in MIDS, the City would need to keep these standards up to date with changing requirements.  
247

248 Ronningen indicated she had concerns about a number of definitions in the MIDS ordinance language. For  
249 example, while the definition of stabilization indicates that grass is not a stabilization method, prairie grass does  
250 provide soil stabilization. Also, the definition of Permittee indicates an application needs to be submitted to the  
251 "town". Afton is a city and not a town or township. Ronningen indicated that these errors suggest to her that the

252 MIDS ordinance is sloppy. She indicated she is also afraid that there may be a lot of inconsistencies and conflicts  
253 between the MIDS ordinance and the zoning code, which could cause problems, and that it would require a  
254 substantial effort to review the zoning code in relation the MIDS to identify conflicts and inconsistencies.  
255

256 **Motion/Second: Ronningen/Patten. To recommend the Council disregard adding the additional MIDS**  
257 **requirements to the existing Zoning Code, due to the Valley Branch Watershed District already using these**  
258 **standards and the City Engineer already providing adequate stormwater management standards based on**  
259 **their expertise in this area, and because the planning Commission saw no downside to not adopting the**  
260 **MIDS ordinance amendment. Motion carried 7-1-0. (Wroblewski)**  
261

262  
263 **9. OLD BUSINESS -**

264 **A. Comprehensive Plan Update Process – Chair Ronningen indicated the Commission members should**  
265 **continue to review the Comprehensive Plan and provide their comments to Moorse, so that he can include them in**  
266 **the February 6, 2017 Planning Commission meeting agenda packet.**  
267

268 **B. Update on City Council Actions. – Ronningen indicated the Council actions from its December 20, 2016**  
269 **regular meeting were provided in the packet, and none were directly related to land use.**  
270

271 **10. ADJOURN –**  
272

273 **Motion/Second: Patten/Wroblewski. To adjourn the meeting at 8:53 p.m. Motion carried 8-0-0.**  
274

275 Respectfully submitted by:  
276

277  
278 \_\_\_\_\_  
279 Ronald J. Moorse, City Administrator  
280

281 **To be approved on February 6, 2017 as (check one): Presented: \_\_\_\_\_ or Amended: \_\_\_\_\_**

CITY OF AFTON  
DRAFT PLANNING COMMISSION MINUTES  
March 6, 2017

1  
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4  
5 1. **CALL TO ORDER** – Chair Barbara Ronningen called the meeting to order at 7:00 p.m.

6  
7 2. **PLEDGE OF ALLEGIANCE** – was recited.

8  
9 3. Oaths of Office

10 A. Administrator Moorese administered the oath of office to Sally Doherty and Scott Patten for the  
11 reappointment of each to an additional three year term on the Planning Commission.

12  
13 4. **ROLL CALL** – Present: Doherty, Nelson, Wroblewski, Patten, Langan and Chair Ronningen. **Quorum**  
14 **present.** Excused Absence: Kopitzke, Seeberger, Bowman.

15  
16 **ALSO IN ATTENDANCE** – Mayor Bend and Council members Nelson, Ross, Richter and Palmquist, and City  
17 Administrator Ron Moorese.

18  
19 5. **APPROVAL OF AGENDA** –

20 **Motion/Second: Patten/Wroblewski. To approve the March 6, 2017 Planning Commission agenda as**  
21 **presented. Motion carried 6-0-0.**

22  
23 6. **APPROVAL OF MINUTES** –

24 A. February 6, 2017 Planning Commission Meeting Minutes – There were no minutes from the February 6,  
25 2017 meeting, because the meeting was not held due to the lack of a quorum. Commissioner Patten reminded the  
26 Commission that the minutes of the January 9, 2017 meeting have not been approved due to the February 6  
27 Commission meeting not being held.

28  
29 6. **ELECTION OF OFFICERS** –

30 Chair Ronningen suggested the election of officers begin with the Secretary position.

31  
32 **Motion/Second: Ronningen/Doherty. To nominate Kris Kopitzke for the position of Secretary. Motion**  
33 **carried 6-0-0.**

34  
35 **Motion/Second: Nelson/Doherty. to nominate Scott Patten for the position of Vice-Chair. Motion carried**  
36 **5-0-1 (Patten).**

37  
38 **Motion/Second: Doherty/Nelson. To nominate Barbara Ronningen for the position of Chair. Motion**  
39 **carried 5-0-1 (Ronningen).**

40  
41  
42 8. **NEW BUSINESS** –

43 A. Joint work session with the City Council regarding goal setting and work planning for 2017- Moorese  
44 outlined the planning and zoning-related goals that were developed by the City Council for discussion with the  
45 Planning Commission. The outline was as follows:

46  
47 Zoning Code

- 48 o Better facilitate communication between the City Council and the Planning  
49 Commission  
50 o Develop procedures to fully and clearly communicate Afton's zoning requirements to  
51 developers at the administrative level, and improve early administrative zoning  
52 review  
53 o Identify preferred uses for the Industrial zones

- 54 ○ Proactively identify parcels that could qualify for Preservation and Land
- 55 Conservation Developments (PLCD's) and identify the optimal access points and
- 56 connections to other potential developments and natural resource areas
- 57 ○ Proactively identify infrastructure alignment for future development
- 58 ○ Proactively identify open space corridors for protection and future connections
- 59 ○ Integrate Minimal Impact Design Standards (MIDS) into the City's land use/ surface
- 60 water management ordinances as appropriate

61 Comprehensive Plan Update

- 62 ○ Obtain a grant for resilience planning

63 Natural Resources Inventory:

- 64 ○ Update the City's Natural Resources Inventory to enable it to be more practical and
- 65 useful for planning activities related to land use and the protection of natural
- 66 resources, including providing mapping capabilities.

67  
68 Commissioner Nelson indicated the Resiliency section of the Comprehensive Plan includes climate change  
69 planning.

70 It was also suggested that Resiliency includes sustainability, i.e. of water supply.

71  
72 Ronningen asked for a clearer definition of Resiliency.

73 Mayor Bend responded that Resiliency also includes disaster planning and recovery. He also indicated a consultant  
74 would be hired only if there was a specific element to be addressed vs. a broader planning effort.

75  
76 Patten suggested the development of an environmental scorecard to provide a baseline for tracking environmental  
77 improvements, vs. for example, the current language on page 19 of the Comprehensive Plan that calls for reducing  
78 nutrient loading by 20%.

79  
80 Ronningen suggested it is important to identify the correct staff at the Met Council who can provide necessary data  
81 for the Comprehensive Plan update, such as data by Traffic Analysis Zone.

82  
83 Doherty asked for clarification regarding the identification of uses for the Industrial zone.

84  
85 Council member Nelson indicated desired uses would provide quality jobs and attractive buildings.

86  
87 Ronningen suggested it is necessary to be specific about the desired uses and about the criteria used to evaluate  
88 uses.

89  
90 It was suggested that a meeting be scheduled with the County Economic Development Director to identify the types  
91 of uses that would want to locate in Afton

92  
93 Patten suggested the first step is to define the "box"-the criteria for uses and what the industrial zone offers- then  
94 identify quality businesses that fit in the box.

95  
96 Ronningen indicated that all of the natural resource-related goals are really mapping goals and not in the purview  
97 of the Planning Commission. They should be addressed by the Natural Resources and Groundwater Committee.

98

99 Ronningen indicated the Planning Commission does not receive any information regarding the activities of other  
100 committees. She requested that the Planning Commission receive copies of the minutes of all other committees as  
101 hardcopies in their agenda packets.  
102

103 Ronningen indicated the Council is tending to ask the Planning Commission to do research, which is the job of  
104 staff. Staff should do the research and bring information to the Planning Commission for feedback.  
105

106 Richter indicated there is a need to clarify the role of the Planning Commission by reviewing the ordinance that sets  
107 out the duties and operation of the Commission. He suggested a copy of the ordinance be provided to the Planning  
108 Commission and the Council in their next agenda packets.  
109

110 The Council and Planning Commission discussed the misunderstandings and frustrations between the Council and  
111 the Commission regarding the MIDS ordinance process.  
112

113 Mayor Bend suggested the Planning Commission and Council should select the top three priority goals to focus  
114 their efforts in 2017.  
115

116 Ronningen indicated a top priority goal should be the completion of a draft of the Comprehensive Plan update by  
117 the end of 2017. The two other priority goals that were identified were as follows: Identify criteria for selecting  
118 uses to be permitted in the Industrial zones and identify specific uses to be permitted; and facilitate improved  
119 communication between the City Council and the Commissions/Committees.  
120

121 Mayor Bend suggested that another joint work session should be scheduled to do implementation planning and  
122 scheduling regarding the top three goals.  
123

124 **OLD BUSINESS -**  
125

126 Due to the joint work session running until 9:00 p.m., the meeting was adjourned without addressing the items  
127 of Old Business.  
128

129 **10. ADJOURN –**  
130

131 **Motion/Second: Ronningen/Wroblewski. To adjourn the meeting at 9:00 p.m. Motion carried 6-0-0.**  
132

133 Respectfully submitted by:  
134  
135

136 \_\_\_\_\_  
137 Ronald J. Moorse, City Administrator  
138

139 **To be approved on April 3, 2017 as (check one): Presented: \_\_\_\_\_ or Amended: \_\_\_\_\_**

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: April 3, 2017

To: Chair Ronningen and members of the Planning Commission  
From: Ron Moore, City Administrator  
Date: March 27, 2017  
Re: Merv Junker and Kelly Naugle Application for Minor Subdivision for a Lot Line Rearrangement at 1171 Manning Avenue and the Parcel with PID# 07.028.20.21.0002

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### Background

The owner of the undeveloped parcel with PID# 07.028.20.21.0002 and the owner of 1171 Manning Avenue propose to rearrange the lot line between the two parcels to enable 7.4 acres to be subdivided from the undeveloped parcel and added to the 1171 Manning Avenue parcel. The boundary of the lot line rearrangement is roughly based on the boundary of the wetland that is located on the undeveloped parcel.

The proposal does not involve the creation of an additional lot. The attached surveys show the existing and proposed lot lines. The proposed lot line rearrangement requires a minor subdivision rather than a simple subdivision because the parcels are nonconforming. Neither of the parcels has 300 feet of frontage on a public roadway. In addition, the undeveloped parcel is under common ownership with the small developed parcel to the west at 1069 Manning. The minor subdivision will involve combining this small parcel with the remainder of the undeveloped parcel.

The surveys, as well as the attached aerial photos, also show a City-owned L-shaped right-of-way lane, the north/south portion of which runs along the west boundary of the 1171 Manning property, which is a barrier to combining the 7.4 acres from the undeveloped parcel with the 1171 Manning parcel. The City Attorney has indicated the simplest solution is to transfer ownership of this portion of the right-of-way lane to Mr. Naugle with the reservation of a public roadway easement. The Council has discussed this solution and is open to considering it in relation to the lot line rearrangement.

### Findings

The following are suggested findings of fact. The Planning Commission may want to provide additional findings that are the basis of its recommendation.

1. The subject properties are located in the Rural Residential zone, as is all property surrounding them
2. The subject properties are legally nonconforming
3. The subdivision will not result in the creation of any additional lots
4. Because the parcel with PID# 07.028.20.21.0002 and the adjacent parcel at 1069 Manning Avenue are both legally nonconforming and are under common ownership, they are required to be combined
5. The City-owned right-of-way lane along the western edge of the 1171 Manning Avenue parcel is a barrier to combining the 7.4 acres to be subdivided from the parcel with PID# 07.028.02.21.0002 with the 1171 Manning Avenue parcel

**Conditions**

If the Planning Commission recommends approval of the subdivision application, it is recommended that the following conditions be placed on the approval, as well as additional conditions the Planning Commission may include.

1. The parcel with PID# 07.028.20.21.0002 shall be combined with the parcel at 1069 Manning Avenue
2. The ownership of the City-owned right-of-way lane along the western edge of the 1171 Manning Avenue parcel shall be changed to enable the 7.4 acres to be subdivided from the parcel with PID# 07.028.20.21.0002 to be combined with the 1171 Manning Avenue parcel.

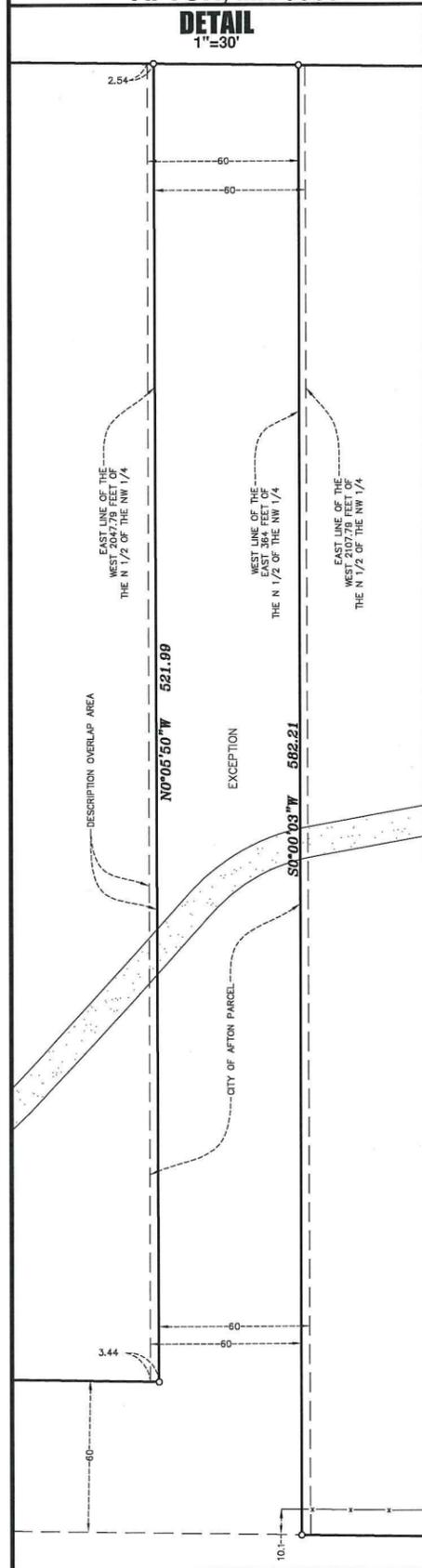
**Planning Commission Recommendation Requested:**

Motion regarding a recommendation concerning the Merv Junker and Kelly Naugle application for minor subdivision for a lot line rearrangement at 1171 Manning Avenue and the Parcel with PID# 07.028.20.21.0002, including findings, and conditions if applicable.

# CERTIFICATE OF SURVEY

~for~ **KELLY NAUGLE**  
 ~of~ **1171 MANNING AVENUE SOUTH**  
**AFTON, MN 55001**

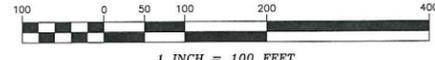
**DETAIL**  
 1"=30'



DRAWN BY: BPN	JOB NO: 16808PP	DATE: 10/18/16
CHECK BY: BLR	SCANNED <input type="checkbox"/>	
1	3/15/17	Rev. Graphics Dist. to 2047.79 BLR
2		
3		
NO.	DATE	DESCRIPTION BY

**NORTH**

GRAPHIC SCALE

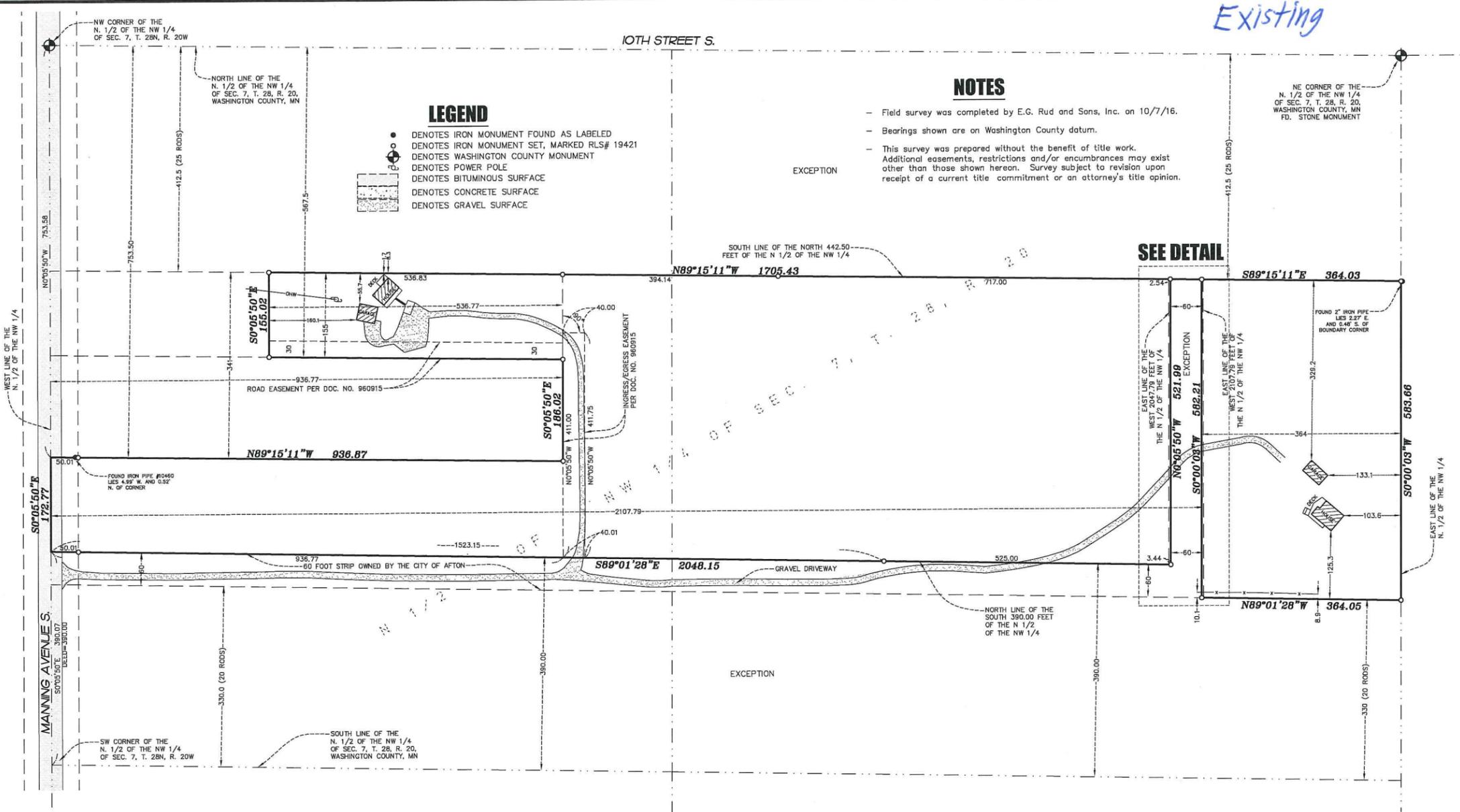


## LEGEND

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 19421
- DENOTES WASHINGTON COUNTY MONUMENT
- DENOTES POWER POLE
- DENOTES BITUMINOUS SURFACE
- DENOTES CONCRETE SURFACE
- DENOTES GRAVEL SURFACE

## NOTES

- Field survey was completed by E.G. Rud and Sons, Inc. on 10/7/16.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.



### EXISTING JUNKER PARCEL

The South 155 feet of the North 567.5 feet of the East 536.77 feet of the West 936.77 feet of the North Half of the Northwest Quarter of Section 7, Township 28 North, Range 20 West, Washington County, Minnesota with a road easement upon and across the South 30 feet. Containing 1.91 acres, more or less. According to the United States Government Survey thereof.

Together with an easement for ingress and egress described as follows:

Commencing at the Southwest corner of the North One-Half of the Northwest One-Quarter of Section 7, Township 28 North, Range 20 West; thence Northerly along the West line of the North One-Half of the Northwest One-Quarter of said Section 7, a distance of 390 feet; thence Easterly on a line parallel with and 390 feet Northerly of the South line of the North One-Half of the Northwest Quarter of Section 7 a distance of 936.77 feet to the point of beginning; thence Northerly on a line parallel with and 936.77 feet East of the West line of the North One-Half of the Northwest One-Quarter of said Section 7, a distance of 411 feet; thence Easterly at right angles a distance of 40 feet; thence Southerly on a line parallel with and 976.77 feet East of the West line of the North One-Half of the Northwest One-Quarter of said Section 7 a distance of 411 feet, more or less, to a point 390 feet North of the South line of the North One-Half of the Northwest One-Quarter of said Section 7; thence Westerly on a line parallel to the South line of the North One-Half of the Northwest One-Quarter of said Section 7 a distance of 40 feet, more or less, to the point of beginning.

Per Document No. 960915.

### EXISTING NAUGLE PARCEL

The East 364 feet of the North Half of the Northwest Quarter of Section 7, Township 28 North, Range 20 West, except therefrom the North 25 rods and also except therefrom the South 20 rods thereof, Washington County, Minnesota. Per Document No. 3538018

### PROPOSED DESCRIPTION JUNKER PARCEL

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AND

The West 2,107.79 feet of the North 1/2 of the Northwest 1/4 of Section 7, Township 28 North, Range 20 West, except therefrom the North 25 rods and also except therefrom the South 20 rods thereof and except the South 341 feet of the North 753.5 feet of the West 936.77 feet, and also except therefrom the southerly 60 feet and the easterly 60 feet thereof. Subject to the rights of County Road 15 on the West side. According to the United States Government Survey thereof.

Excepting therefrom

All that part of the west 2047.79 feet of the North Half of the Northwest Quarter of Section 7, Township 28 North, Range 20 West, lying south of the north 412.5 feet thereof, north of the south 390.00 feet thereof which lies east of the following described line:

Commencing at the intersection of the west line of said North Half of the Northwest Quarter and the north line of the south 390.00 feet of said North Half of the Northwest Quarter; thence, on an assumed bearing of South 89 degrees 01 minutes 28 seconds East, along said north line of the south 390.00 feet thereof, a distance of 1523.15 feet, to the point of beginning of the line to be described; thence North 20 degrees 16 minutes 03 seconds West, a distance of 556.87 feet to its intersection with the south line of the north 412.5 feet of said North Half of the Northwest Quarter and said described line there terminating.

### PROPOSED DESCRIPTION NAUGLE PARCEL

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I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

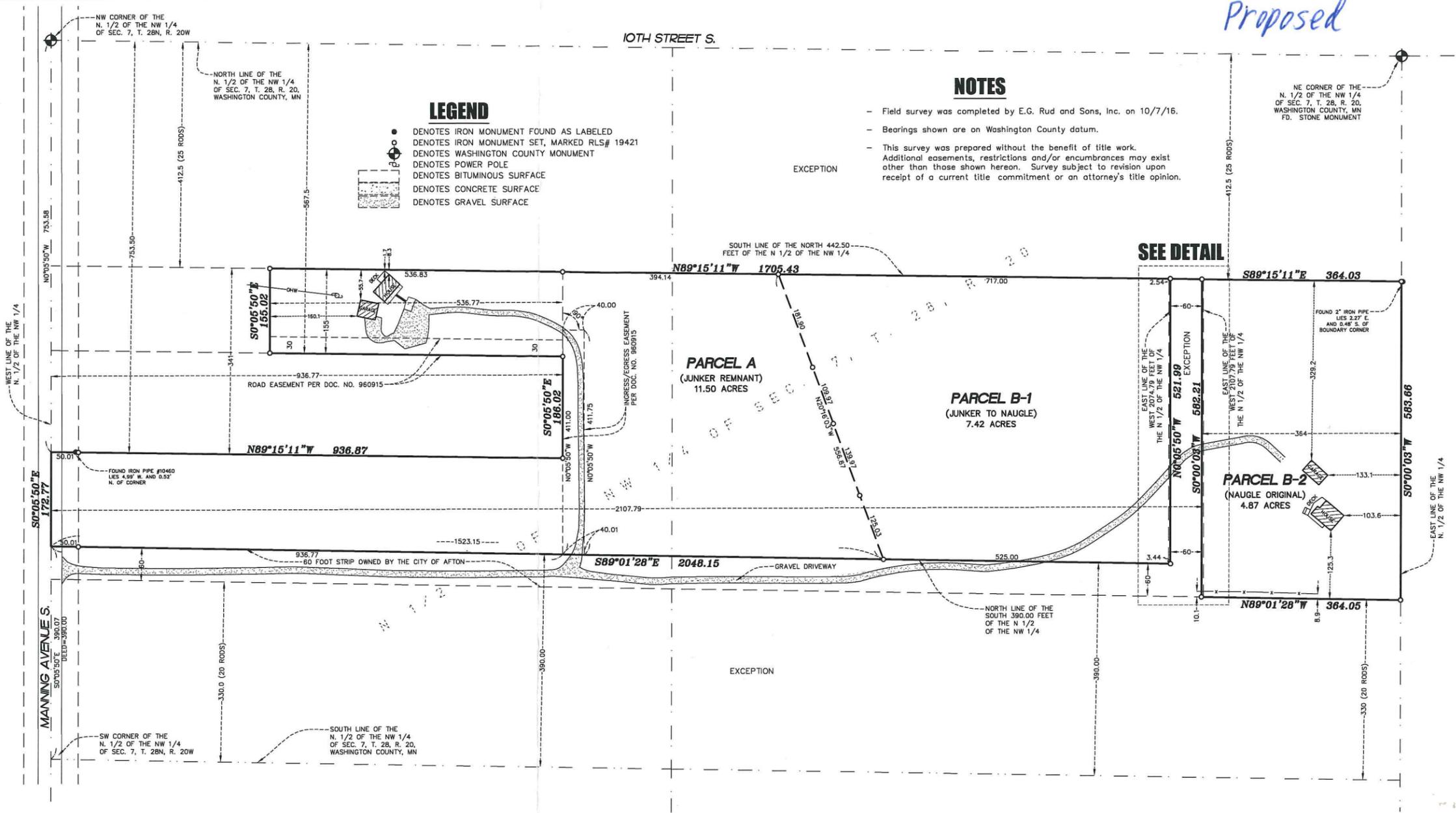
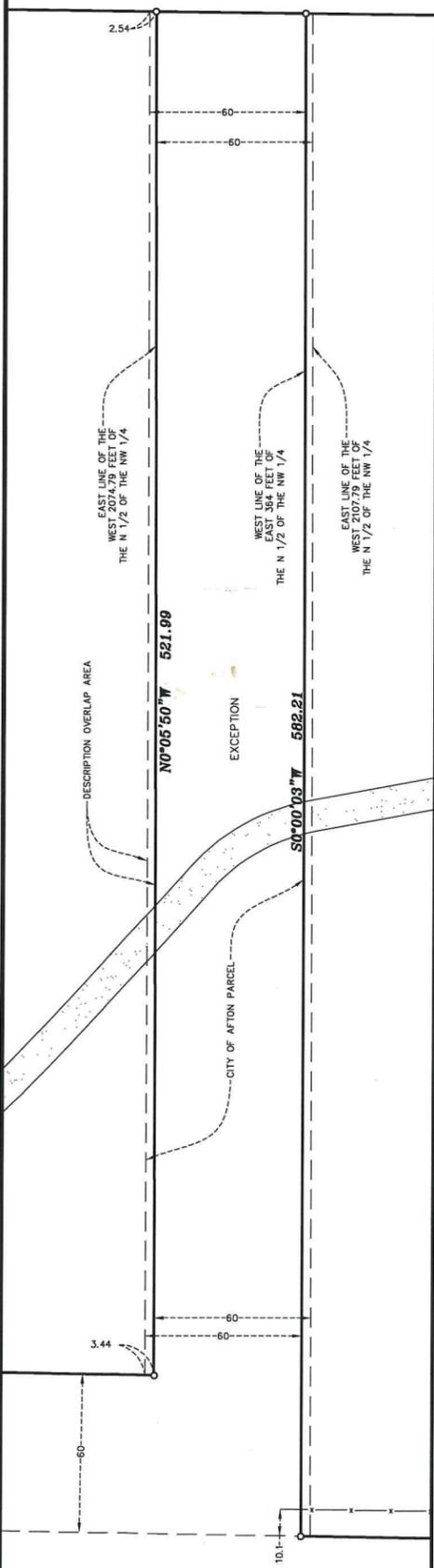
BLAKE L. RIVARD  
 Date: 10/18/16 License No. 19421

**E. G. RUD & SONS, INC.**  
 EST. 1977  
**Professional Land Surveyors**  
 6776 Lake Drive NE, Suite 110  
 Lino Lakes, MN 55014  
 Tel. (651) 361-8200 Fax (651) 361-8701

# CERTIFICATE OF SURVEY

~for~ KELLY NAUGLE  
 ~of~ 1171 MANNING AVENUE SOUTH  
 AFTON, MN 55001

DETAIL  
 1"=30'



**LEGEND**

- DENOTES IRON MONUMENT FOUND AS LABELED
- DENOTES IRON MONUMENT SET, MARKED RLS# 19421
- DENOTES WASHINGTON COUNTY MONUMENT
- DENOTES POWER POLE
- ▨ DENOTES BITUMINOUS SURFACE
- ▩ DENOTES CONCRETE SURFACE
- ▧ DENOTES GRAVEL SURFACE

**NOTES**

- Field survey was completed by E.G. Rud and Sons, Inc. on 10/7/16.
- Bearings shown are on Washington County datum.
- This survey was prepared without the benefit of title work. Additional easements, restrictions and/or encumbrances may exist other than those shown hereon. Survey subject to revision upon receipt of a current title commitment or an attorney's title opinion.

*Proposed*

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Per Document No. 960915.  
 AND  
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Per Document No. 3538018  
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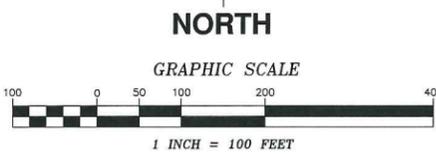
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I hereby certify that this survey, plan or report was prepared by me or under my direct supervision and that I am a duly Registered Land Surveyor under the laws of the State of Minnesota.

*BLR*  
 BLAKE L. RIVARD  
 Date: 10/19/16 License No. 19421



DRAWN BY: BPN	JOB NO: 16808PP	DATE: 10/18/16	
CHECK BY: BLR	SCANNED <input type="checkbox"/>		
1			
2			
3			
NO.	DATE	DESCRIPTION	BY

**E.G. RUD & SONS, INC.**  
 EST. 1977  
 Professional Land Surveyors  
 6776 Lake Drive NE, Suite 110  
 Lino Lakes, MN 55014  
 Tel. (651) 361-8200 Fax (651) 361-8701





RECEIVED

MAR 27 2017

CITY OF AFTON

CITY OF AFTON

MINOR SUBDIVISION PERMIT APPLICATION

(Reference Sections: 12-1256, 12-1260)

Owner <i>Mervin Junker</i>	Address <i>1069 Manning</i>	City <i>Afton</i>	State <i>MN</i>	Zip <i>55001</i>	Phone <i>651-430-6746</i>
<i>Kelly Naggie</i>	<i>1171 MANNING</i>	<i>AFTON</i>	<i>MN</i>	<i>55001</i>	<i>612-598</i>
Applicant (if different than owner)	Address	City	State	Zip	Phone <i>4558</i>

Project Address  
*1069 Manning Ave S.*      **AFTON**      **MN**      **55001**

Zoning Classification	Existing Use of Property	PID# or Legal Description
<i>Agriculture</i>	<i>Residential</i>	<i>#0702820220002</i> <i>#0702820210002</i>

Description of Request  
*To purchase the 7.4 acres from Mervin Junker to increase my total acreage. I will continue to lease the land to the farmers for agriculture.*

By signing this application, the applicant agrees to pay all expenses incurred by the City of Afton. In connection with this request, your signature constitutes permission for a representative of the City of Afton to enter your property, during business hours, to evaluate this request. This may involve minor excavating or soil borings. If you would like to be present during this evaluation, please contact the City.

<i>Mervin Junker</i> <i>3-23-17</i>	<i>Kelly Naggie</i> <i>3-24-17</i>
Signature of Owner/Applicant	Date

Make checks payable to **City of Afton:**

<b>FEES:</b>	<b>Escrow:</b>	
Minor Subdivision    \$250.00	Minor Subdivision    \$1,500.00	TOTAL: <u>\$1,750.00</u>
		DATE PAID: <u>3-20-17</u>
		CHECK #: <u>1642</u>
		RECVD. BY: <i>[Signature]</i>

ATTACH COPY OF DEED OR PROOF OF OWNERSHIP TO APPLICATION

**Washington County Parcel Information**

<b>Parcel Number</b>	<b>Status</b>	<b>Last Update</b>
07.028.20.21.0002	Active	3/29/2017 12:50:42 AM
<b>Current Owner:</b> JUNKER MERVIN 1069 MANNING AVE S AFTON, MN 55001		<b>Property Address:</b> 0
<b>Taxing District</b> 1005 AFTON-834-VBWS		
<b>Tax Description</b>		
Section 07 Township 028 Range		



Department of Property Records  
and Taxpayer Services

14949 62<sup>nd</sup> Street North PO Box 200  
Stillwater, MN 55082-0200  
(651) 430-6175 www.co.washington.mn.us

Property ID: 07.028.20.21.0003

Bill#: 697541



01015836

Taxpayer: KELLY D NAUGLE  
1171 MANNING AVE S  
AFTON MN 55001-9715



# TAX STATEMENT

# 2017

2016 Values for Taxes Payable in

VALUES AND CLASSIFICATION			
Taxes Payable Year:	2016	2017	
Estimated Market Value:	405,200	371,900	
Step 1 Homestead Exclusion:	800	3,800	
Taxable Market Value:	404,400	368,100	
New Improvements/ Expired Exclusions:	56,900		
Property Classification:	Res Hstd	Res Hstd	
Sent in March 2016			
Step 2	<b>PROPOSED TAX</b>		\$3,982.00
Did not include special assessments or referenda approved by the voters at the November election			
Sent in November 2016			
Step 3	<b>PROPERTY TAX STATEMENT</b>		
First half taxes due	May 15	\$1,992.00	
Second half taxes due	October 15	\$1,992.00	
Total Taxes Due in 2017:	\$3,984.00		



01015836

# \$\$\$

## REFUNDS?

You may be eligible for one or even two refunds to reduce your property tax. Read the back of this statement to find out how to apply.

### Property Address:

1171 MANNING AVE S  
AFTON MN 55001

### Description:

Section 07 Township 028 Range 020 PT N1/2-NW1/4  
BEING E 364FT EXCEPT N 25 RODS ALSO EXCEPT  
S 20 RODS SUBJ TO EASE

### Line 13 Special Assessment Detail:

COUNTY ENVIRONMENTAL CHARGE PHE DEP 3.00

Principal: 3.00  
Interest: 0.00

### Tax Detail for Your Property:

Taxes Payable Year:		2016	2017
1. Use this amount on Form M1PR to see if you are eligible for a property tax refund. File by August 15. If this box is checked, you owe delinquent taxes and are not eligible. <input type="checkbox"/>			\$3,981.00
2. Use these amounts on Form M1PR to see if you are eligible for a special refund.		\$4,279.00	
Tax and Credits	3. Property taxes before credits	\$4,279.00	\$3,981.00
	4. Credits that reduce property taxes		
	A. Agricultural market value credit	\$0.00	\$0.00
	B. Other Credits	\$0.00	\$0.00
	<b>5. Property taxes after credits</b>	<b>\$4,279.00</b>	<b>\$3,981.00</b>
Property Tax by Jurisdiction	6. WASHINGTON COUNTY		
	A. County General	\$1,236.84	\$1,120.77
	B. County Regional Rail Authority	\$10.00	\$8.95
	7. CITY OF AFTON	\$1,187.84	\$1,188.95
	8. State General Tax	\$0.00	\$0.00
	9. ISD 834 STILLWATER		
	A. Voter approved levies	\$654.12	\$579.11
	B. Other Local Levies	\$983.99	\$896.82
	10. Special Taxing Districts		
	A. Metropolitan Council	\$37.68	\$31.57
B. Metropolitan Mosquito Control	\$19.71	\$17.03	
C. Valley Branch Watershed	\$71.22	\$69.45	
D. County HRA	\$61.82	\$54.28	
	11. Non-school voter approved referenda levies	\$15.78	\$14.07
	12. Total property tax before special assessments	\$4,279.00	\$3,981.00
	13. Special assessments	\$3.00	\$3.00
	<b>14. TOTAL PROPERTY TAX AND SPECIAL ASSESSMENTS</b>	<b>\$4,282.00</b>	<b>\$3,984.00</b>

Detach at perforation & mail this stub with your 2<sup>nd</sup> half payment in the enclosed green envelope  
Res Hstd

\*\*ESCROW NOTE\*\* Your taxes have been sent to escrow agent SUPERIOR FEDERAL CREDIT UNION. If you do not escrow your taxes, please pay the amount indicated in the box.

SECOND HALF TAX AMT

**\$1,992.00**

### MAKE CHECKS PAYABLE TO:

Washington County  
P.O. Box 200  
Stillwater MN 55082-0200

CHECK

CASH

No Receipt sent. Your canceled check is proof of payment. Do not send postdated checks.

## PAYABLE 2017 2<sup>nd</sup> HALF PAYMENT STUB

TO AVOID PENALTY PAY ON OR BEFORE: October 15

Property ID: 07.028.20.21.0003

Bill #: 697541



Taxpayer:  
KELLY D NAUGLE  
1171 MANNING AVE S  
AFTON MN 55001-9715

0702820210003 2 00000000199200 4

Parcel Search: March 23, 2017 at 11:29 a.m. by SURVPUB  
500 feet surrounding multiple parcels. 23 parcels, 20 labels.

0102821430001  
0602820330006  
0602820330007  
0602820340004  
0602820430002  
0602820430003  
0702820120003  
0702820120006  
0702820130001  
0702820210001  
0702820210002  
0702820210003  
0702820210004  
0702820210005  
0702820220001  
0702820220002  
0702820220003  
0702820220004  
0702820240001  
1202821110001  
1202821110002  
1202821110003  
1202821140002

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: April 3, 2017

To: Chair Ronningen and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: March 28, 2017  
Re: Role of Planning Commission

---

Council member Richter has requested that the Planning Commission be provided with a copy of the City Ordinance that establishes the Planning Commission, as well as two documents from the League of Minnesota Cities that provide direction and guidance regarding the work of the Planning Commission. The Commission may want to discuss the materials and how they clarify the role of the Commission as well as the guidance they provide for the Commission's work.

**PLANNING COMMISSION DIRECTION REQUESTED:**

**No direction required.**

## ADMINISTRATION

- (6) Work with residents, contractors, architects, developers, the city staff, fire department and other agencies and departments concerning permit applications, work in progress and questions relating to codes and regulations. Assist in revision of plans, reviews by consultants, coordination of consultants and related reviews, permits or inspections.
  - (7) Assist in preparations of the departmental budget and in maintaining budgetary control, maintain records and prepare reports.
  - (8) Establish and maintain all records, pertinent files and necessary reports on all permits, zoning actions, Code violations and other related development activities, including notices, correspondence, minutes and ordinances.
  - (9) Assist the city administrator in the development and maintenance of a GIS system, policy and ordinance revisions and land use planning procedures and controls.
  - (10) Prepare monthly and annual reports on construction activities to regional, state and federal agencies and to the City Council.
  - (11) Keep abreast of new equipment, materials, technologies and construction practices, as well as new or changing codes, regulations and enforcement procedure; and recommend changes in policies and ordinances to the city administrator.
  - (12) Attend City Council and planning commission meetings, as needed, to present recommendations and findings.
  - (13) Perform related work as required.
- (c) The building official shall report directly to the city administrator.
- (d) All other requirements for this position shall be set forth in the job description.  
(Res. No. 1997-16, §§ 2, 7, 6-17-97; Res. No. 1997-18, 6-17-97)

**Secs. 2-112--2-125. Reserved.**

## ARTICLE IV. BOARDS, COMMISSIONS AND COMMITTEES\*

### DIVISION 1. GENERALLY

**Secs. 2-126--2-130. Reserved.**

### DIVISION 2. PLANNING COMMISSION†

**Sec. 2-131. Established.**

A planning commission for the city is hereby established pursuant to M.S.A. §§462.351-462.364.  
(Code 1982, § 204.101)

**Sec. 2-132. Members generally.**

The members of the planning commission shall be appointed by a majority of the city council. The council shall appoint nine (9) members to the planning commission.

- (a) *Composition.* Each ward shall be continually represented by at least one member residing in such ward, with no more than 3 members from any one ward.
- (b) *Qualifications.* Every member shall be a registered voter in the city, and before entering upon disposition of their duties, each member shall take an oath that they will faithfully perform the duties of office.

AFTON CODE

(c) *Compensation.* All members shall serve without compensation.

(d) *Ex-officio member.* They city council shall appoint one of its members to serve as an ex-officio member of the planning commission. Such council member shall not have a vote in any proceedings, nor hold any office in the commission.

(Code 1982, § 204.102; Ord. 3-2009, 4/21/09)

**Sec. 2-133. Terms of office.**

The members of the planning commission shall be appointed for overlapping terms of three years, effective February 15 of each year.

(Ord. 1997-57, 1/21/03; Ord. 2006-11, 11/21/06)

**Sec. 2-134. Terminations.**

Any planning commission member's term shall terminate upon his resignation, or upon his ceasing to reside within the city, or it by reason of his change of residence a ward ceases to be represented, or by four/fifths (4/5) vote of the city council for cause. Cause shall include, but not be limited to, having more than three absences or more than one unexcused absence in any one calendar year. The council may consider exceptional circumstances when applying this rule.

**Sec. 2-135. Vacancies.**

The city council shall fill any vacancy occurring in the membership of the planning commission by appointment for the unexpired term of such vacancy.

(Ord 1997-50, 8/22/00)

**Sec. 2-136. Officers.**

The members of the planning commission shall elect a chairperson, a vice-chairperson and a secretary from among its appointed members at the annual meeting each year, for a term of one year. The chairperson shall preside at all meetings of the commission, is present, and shall perform all other duties and functions assigned by the commission or the city 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, after at least three days written notice to each commission member. The secretary shall take the minutes of the commission meetings.

**Sec. 2-137. Duties and powers.**

The planning commission shall be the planning agency of the city and shall have the powers and duties given such agencies generally by M.S.A. §§ 462.351—462.364, together with the following:

(a) The commission shall exercise the duties and powers conferred upon it by any ordinance of the city now existing or hereafter enacted.

(b) It shall be the duty of the commission to study and make its recommendation to the city council concerning the following:

- (1) A comprehensive plan for the land use of the city;
- (2) All applications for special use permits, rezoning, variances, other zoning permits and other related matters;
- (3) Proposed plat; minor subdivisions, parks and open spaces plans;

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\***Cross references** – Board of adjustment, § 12-1194; board of adjustment and appeals, § 12-2082,

†**Cross reference** – Land use, Ch. 12.

## ADMINISTRATION

(4) Laying out of streets and public ways and other related matters;

(c) The commission shall undertake studies and recommend actions on such planning matters as the city council may from time to time refer to the commission.

(d) The commission shall have the power to hold a public hearing upon any application for a special use permit, rezoning or amendment to the zoning ordinance, upon ten days public notice.

(e) The commission shall have the power to form and appoint committees to carry out its duties and powers, including, but not limited to committees for zoning, parks, open spaces, natural resources and capital improvements.

(Code 1982, § 204.107)

### **Sec. 2-138. Zoning ordinances: public hearings.**

No zoning ordinance or amendment thereto, shall be adopted by the city council until a public hearing has been held thereon by the planning commission upon notice as provided in M.S.A. § 462.357, subd.3 and 4. The record of the public hearing by the planning commission shall include the name of every person speaking for or against the proposal and a summary of the testimony of each witness.

### **Sec. 2-139. Annual work plan.**

The planning commission shall meet with the City council at their annual meeting in January to develop an annual work plan, including a list of projects, points of interaction on projects, programs and goals for the year. (Res. 1996-48, §210.108, 12-17-96; Res. 1997-16, §3, 6-17-97)

### **Sec. 2-140. Regular meetings.**

- (a) The planning commission shall hold at least one regular meeting each month. It shall adopt rules for the transaction of business and shall keep a record of its regulations, transactions, and findings, which shall be a public record. Expenditures of the commission shall be within amounts appropriated for the purpose by the city council.
- (b) 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 commission at a prior meeting or if there are no scheduled agenda items, ten days prior to the meeting.
- (c) All action taken by the commission shall be by the affirmative vote of a majority of the members present.

### **Sec. 2-141. Special meetings.**

Special meeting of the planning commission shall be held in the city hall at a time and designated or at a public place at the time designated and shall be called by the chairperson. Upon the written request of at least three members, the chairperson shall be required to call a special meeting to be held within seven days of the request. Written notice thereof shall be given to all members not less than three days in advance of the meeting.

### **Sec. 2-142. Quorum.**

A quorum of the planning commission shall consist of a simple majority.

### **Sec. 2-143. Voting.**

Each member of the planning commission attending any meeting shall be entitled to cast one vote. Voting shall be by voice vote. If any member shall have a personal interest of any kind in the matter then before the commission, he shall disclose this interest and be disqualified from voting upon the matter, and the secretary shall record in the minutes that no vote was cast by such member.

AFTON CODE

**Sec. 2-144. Proceedings.**

At any regular meeting of the planning commission, the following shall be the regular order of business:

- (1) Roll call.
- (2) Minutes of the preceding meeting.
- (3) Approval of agenda.
- (4) Public hearings as scheduled on the agenda.
- (5) Other business.
- (6) Adjournment.

**Sec. 2-145. Rules of procedure.**

All meetings of the planning commission shall be conducted in accordance with the Revised Robert's Rules of Order.

**Sec. 2-146. Agendas.**

The city administrator shall cause all items to be considered at any regular meeting to be placed on a written agenda ten days before the regular meeting. The city administrator shall advise the chairperson of any matters the commission must consider by council directive, ordinance or statute and shall have prepared and mailed a written agenda of all meetings to all commission members, the city council and the public, no less than five days before each meeting.

**Sec. 2-147. Records.**

Each formal action of the planning commission shall be embodied in full upon the minute book as a formal motion or resolution after an affirmative vote as provided in this division. The minutes of each meeting shall be provided to each member, the City council and the public no more than seven days after the date of each meeting. The recommendations and findings of the commission shall be presented to the City council at the next regularly scheduled City council meeting. The record of meetings, actions and recommendations shall be transmitted to the City Administrator for keeping and distribution.

**Sec. 2-148. Member training.**

The planning commission members shall be encouraged to avail themselves of training courses offered by the city, the state and other government and public training agencies and the city council shall budget for the reimbursement of expenses incurred in training each year.  
(Ord 1997-50, 8/22/00)

DIVISION 3. HERITAGE PRESERVATION COMMISSION\*

**Sec. 2-150. Established; members.**

There is hereby created and established a city heritage preservation commission which shall consist of no more than nine (9), but no fewer than five (5) members. One (1) shall be appointed directly by the Afton Historical Society and the other members shall be appointed by the City Council. Any member appointed to serve on the preservation commission shall have a demonstrated interest and/or expertise in historic preservation. At least two members must be professional in a field related to preservation (architecture, history, planning, design, construction, law, and so forth).  
(Code 1982, § 308.000(3)1; Res. No. 1997-16, § 3, 6-17-97; Ord. 1997-51, 1/16/01; Ord. 2005-4, 4/19/05; Ord. 12-2010, 12/21/10)

**Sec. 2-151. Terms of office.**

All appointments to the commission shall be made for a term of three years. Members may be reappointed for consecutive terms. Members shall serve without compensation and continue to hold office until their successors have been appointed and qualified.



## INFORMATION MEMO

# Planning Commission Guide

*Learn ways the city may create, change or discontinue a city planning commission. Provides 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; how to implement it. Ways to participate in joint or multijurisdictional planning.*

### RELEVANT LINKS:

Minn. Stat. § 462.355.  
Minn. Stat. § 473.175.

See MN Planning “*Under Construction: Tools and Techniques for Local Planning.*”

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:

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

**RELEVANT LINKS:**

LMC Model Planning  
Commission Ordinance.

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

**RELEVANT LINKS:**

See Section IV- *Planning Agency Meetings*.

See LMC Model Planning Commission Policy on Rules and Procedure.

Minn. Stat. § 462.354.  
See Section III – *Powers and Duties of the Planning Commission*.

Minn. Stat. § 462.354.

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.

### **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**

State statutes prescribe several mandatory duties for the city planning commission. A 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.

**RELEVANT LINKS:**

Sample Advertisement.  
Sample City Application  
Forms.  
Sample Interview Questions.

LMC information memo,  
*Residency Requirements for  
City Boards and  
Commissions.*

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

## **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.

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.

## RELEVANT LINKS:

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.

### 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 provide that planning commission members may be compensated for their service, or that they 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.

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

**RELEVANT LINKS:**

*Lenz v. Coon Creek Watershed, Dist.*, 278 Minn. 1, 153 NW 2d 209 (1967).  
*Township Bd. Of Lake Valley Township v Lewis*, 305 Minn. 488, 234 N.W. 2d 815 (1975).

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. Local ordinance or commission policy should establish both criteria for removal 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**

In essence, 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.

Minn. Stat. § 462.351.  
Minn. Stat. § 462.352, subd 5.  
See MN Planning “*Under Construction: Tools and Techniques for Local Planning.*”  
Sample: Bethel Comprehensive Plan, City Population 502.  
Sample: Chisago City Comprehensive Plan, City Population 4,307.  
Sample: Minnetonka Comprehensive Plan, City Population 51,519.

## 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.

- 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. 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.

**RELEVANT LINKS:**

Minn. Stat. § 462.353, subd. 2.

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.

Sample: Newsletter Article on Comprehensive Planning.

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.

**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). In order 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.

**RELEVANT LINKS:**

Minn. Stat. § 462.357, subd. 1h. Minn. Stat. § 462.355, subd. 1. Minn. Stat. § 103G.005, subd. 10b.

Minn. Stat. § 462.355.

Minn. Stat. § 462.357.

Minn. Stat. § 462.355, subd 2.

Minn. Stat. § 462.354.

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

Non-metropolitan cities located in certain counties are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the “T. Roosevelt Memorial Preservation Act”) when adopting or amending a comprehensive plan.

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. These counties still contain a significant portion of their presettlement wetland acreage. Cities outside the metro area, and not located in the counties listed above, must comply with the Act.

Cities subject to the T. Roosevelt Memorial Preservation Act are not required to engage in comprehensive planning, but when they do must consider the natural resource and open space preservation goals of the Act when adopting a comprehensive plan.

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. Such consideration could potentially be documented in 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.

**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.

## RELEVANT LINKS:

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.

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

Minn. Stat. § 462.356, subd. 1.

Minn. Stat. § 462.356, subd. 1.

## 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. All cities: 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 of 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.

## 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:

## RELEVANT LINKS:

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,  
*Subdivisions, Plats and  
Development Agreements.*  
See Handbook,  
*Comprehensive Planning,  
Land Use, and City-Owned  
Land.*

Minn. Stat. § 462.355, subd  
1.

Minn. Stat. § 462.355, subd.  
1a. Minn. Stat. § 473.121,  
subd. 2. Minn. Stat. §  
473.864, subd. 2.

Minn. Stat. § 462.355, subd.  
3.

See Section III-A-4 *Adopting  
the Comprehensive Plan.*  
Minn. Stat. § 462.355, subd.  
3.

- 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 metro 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.

### **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.

## RELEVANT LINKS:

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*.

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

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 of 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.

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.

## RELEVANT LINKS:

Minn. Stat. § 462.356, subd 2.

Minn. Stat. § 475.521, subd. 1 (b). Minn. Stat. § 373.40, subd. 1(b).

*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*.

## 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. However, other statutes define a capital improvement as “betterment of public lands, buildings or other improvements.”

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

At any time after the adoption of a comprehensive plan or simply a portion of the plan creating a land use plan, the planning commission, for the purpose of carrying out the policies and goals of the land use plan, may 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.

**RELEVANT LINKS:**

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*.

Minn. Stat. § 462.357, subd 3.

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. 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.

## RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 2.

Minn. Stat. § 462.357, subd. 5.

Minn. Stat. § 462.3595.

See LMC information memo, *Zoning Guide for Cities*.

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.

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. 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. 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**

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.

## RELEVANT LINKS:

See LMC information memo, *Purchase and Sale of Real Property*.

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.

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 payment. 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, the issuance of building permits under the MN State Building Code are subject to its provisions. If any building is built without a building permit or in violation of permit conditions, a municipality need not compensate a landowner whose building may be destroyed if a street is widened. In other words, while the official map does not give any interest in land, 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.

## RELEVANT LINKS:

Minn. Stat. § 462.354, subd. 2.

Minn. Stat. § 462.354, subd. 2.

Minn. Stat. § 462.354, subd. 2.

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, *Subdivisions, Plats, and Development Agreements*.

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.

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.

## RELEVANT LINKS:

See LMC information memo *Subdivisions, Plats, and Development Agreements*.

See the LMC information memo, *Meetings of City Councils*.

See LMC information memo, *Meetings of City Councils*.  
Minn. Stat. § 13D.01.

*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*.

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 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:

- 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*.

## RELEVANT LINKS:

For more information on the 60-Day Rule see the LMC information memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

Minn. Stat. § 15.99.  
*Manco of Fairmont v. Town Bd. of Rock Dell Township*, 583 N.W.2d 293 (Minn. Ct. App. 1998).  
*Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536 (Minn. 2007).

Minn. Stat. § 15.99, subd. 1(c).  
Minn. Stat. § 15.99, subd. 2(a).  
Minn. Stat. § 462.358, subd. 3b.  
*Advantage Capital Mgmt. v. City of Northfield*, 664 N.W.2d 421 (Minn. Ct. App. 2003).

## 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.

### 1. Scope of the rule

The rule applies to a “request related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning.” It is useful to look at the precise wording of the statute to see it covers much more than just requests “related to zoning.”

“Except as otherwise provided in this section, section 462.358 subd. 3b, or 473.175, or chapter 505, and notwithstanding any other law to the contrary, an agency must approve or deny within 60 days a written request relating to zoning, septic systems, watershed district review, soil and water conservation district review, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action.”

The language covers requests for rezonings, conditional use permits and variances. Courts have also found the law applies to requests for sign permits, wetlands determination review, and road permits.

In short, almost all requests affecting the use of land have been treated as subject to the law. Subdivision and plat approvals are an exception, since those processes are subject to their own timeframes. The law also does not apply to applications for building permits.

Building permits are issued pursuant to the State Building Code to regulate the construction process, they do not regulate the use of land that may occur in a particular zoning district. Therefore, they are not “related to zoning.”

## RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 1(c).

Minn. Stat. § 15.99, subd. 3(a).

Minn. Stat. § 15.99, subd. 3(c).

*Tollefson Dev., Inc. v. City of Elk River*, 665 N.W.2d 554 (Minn. Ct. App. 2003).

Minn. Stat. § 15.99, subd. 2(a).  
Minn. Stat. § 15.99, subd. 2(c).  
*Hans Hagen Homes v City of Minnetrista*, 728 NW 2d 536 (Minn. 2007). *Johnson v Cook County*, 786 N.W.2d 291 (Minn. 2010).

Minn. Stat. § 15.99, subd. 2(b).

## 2. Applications

A request must be submitted in writing on the city's application form, if one exists. A request not on the city's form must clearly identify the approval sought on the first page. The city may reject a request not on the city's form as incomplete, if the request does not include information required by the city. The request also is considered incomplete if it does not include the application fee.

The 60-day time period does not begin to run if the city notifies the landowner in writing within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

If a city grants an approval within 60 days of receiving a written request, and the city can document this, it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

## 3. Denials

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

## RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 3(f).

*American Tower, L.P. v. City of Grant*, 636 N.W.2d 309(Minn. 2001). *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002).

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.  
Minn. R. ch. 4410.

## 4. Extensions

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

- Written notification of the extension before the end of the initial 60-day period.
- The reasons for extension.
- The anticipated length of the extension.

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet each element of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be specific in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant's request for an extension, this should be thoroughly documented.

Once the city has granted itself one 60 day extension any additional extensions must be negotiated with and agreed upon by the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing.

The applicant also may ask for an additional extension by written request.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed.

Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

## RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 2(a), (e).

See LMC information memo, *The 60 Day Rule: Minnesota's Automatic Approval Statute*.

See LMC Model Planning Commission Policy on Rules and Procedure.

See LMC information memo, *Meetings of City Councils*.

See LMC information memo, *Public Hearings*.

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

### **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.

## RELEVANT LINKS:

See Handbook, *Records Management*.  
Minn. Stat. § 15.17, subs. 1, 2.  
See LMC information memo, *Meetings of City Councils* for more information on minutes.

See LMC information memo, *Zoning Guide*, Section V-C-2

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

See Sample: Findings of Fact, City of Burnsville.  
LMC information memos:  
*Taking the Mystery out of Findings of Fact; Zoning Decisions*.

### 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. 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 make written findings of fact related to 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.

## RELEVANT LINKS:

Minn. Stat. § 15.17.  
Minn. Stat. § 138.225.  
Minn. Stat. §§ 138.161-.21.  
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*.  
Sample: Findings of Fact:  
City of Bumsville.

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.

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. 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.

## RELEVANT LINKS:

“Counting the Votes on Council Actions, Part 1 and Part 2,” Minnesota Cities (May and June-July 2006, p. 19).  
Minn. Stat. § 410.12.

Minn. Stat. § 462.3535, subd. 1, 2.

Minn. Stat. § 462.3535, subd. 4.

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 a from a five to seven member commission). The ordinance must be approved by a simple majority of city council members present at the meeting. Planning commissions created by city charter can only be modified by a charter amendment.

## **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.

**RELEVANT LINKS:**

Minn. Stat. § 462.3585.

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.

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.

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

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.

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.
- 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.

**RELEVANT LINKS:**

Minn. Stat. § 462.358, subd. 1a.

Minn. Stat. § 462.371.  
See Handbook,  
*Intergovernmental  
Cooperation.*  
See LMC information memo  
*Liability Coverage for Joint  
Powers Agreements.*

Minn. Stat. § 462.372.

Minn. Stat. § 462.373, subd. 1.

Minn. Stat. § 462.373, subd. 2.

Minn. Stat. § 462.374.

Minn. Stat. § 462.375.

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, the subdivision regulations which the city has extended will apply until the joint board adopts subdivision regulations.

### **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:

- 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.

**RELEVANT LINKS:**

Minn. Stat. § 462.383.

Minn. Stat. § 462.385.

Northwest Development Commission.

Headwaters Regional Development Commission.

Arrowhead Regional Development Commission.

West Central Initiative.

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.

## **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, Mahnommen, 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.

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.

RELEVANT LINKS:

LMCIT Land Use Resources.

Government Training  
Services.  
American Planning  
Association.

## 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.



## INFORMATION MEMO

# Zoning Guide for Cities

*Learn the framework of municipal zoning and basics of other land use controls available to cities that may complement or be used separately from zoning controls. Find guidance on zoning ordinance drafting, adoption, administration and enforcement. Links to sample zoning provisions and maps from other Minnesota cities.*

### RELEVANT LINKS:

Minn. Stat. § 462.351.

*Town of Oronoco v. City of Rochester*, 293 Minn. 468, 197 N.W.2d 426 (Minn. 1972).

Minn. Stat. § 462.357, subd. 1.  
Sample Zoning District Section.

Minn. Stat. § 462.357, subd. 1.

## I. Basic zoning concepts

### A. The purpose of zoning

Zoning allows a city to control the development of land within the community – both the type of structures that are built and the uses to which the land is put. Most building in a community is done by private individuals and businesses seeking to develop property for their own private use – whether this is residential, commercial or industrial. Zoning is one important tool for guiding this private development, so that land is used in a way that promotes both the best use of the land and the prosperity, health and welfare of the city's residents. Local zoning control over other governmental entities acting or owning property within a city, such as the State of Minnesota and local school districts may be more limited depending on the circumstances.

Zoning is normally accomplished by dividing the land in the city into different districts or zones and regulating the uses of land within each district. Generally, specific districts are set aside for residential, types of commercial and various industrial uses. The city can also use zoning to further agricultural and open space objectives.

By creating zoning districts that separate uses, the city assures that adequate space is provided for each use and that a transition area or buffer exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and keeps residential areas free of potential commercial and industrial nuisances such as smoke, noise and light.

Zoning regulations may also constrain the types and location of structures. The regulations must be the same within each district, but may vary from district to district. These regulations often control:

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

**RELEVANT LINKS:**

*Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 U.S., 1926.  
*Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App.2002).  
Minn. Stat. § 462.352, subd. 2. Minn. Stat. § 462.351.

Minn. Stat. § 473.851.

Minn. Stat. § 103F. Minn. Stat. §§ 103F-103F.155.  
Minn. Stat. § 103F.335.  
Minn. Stat. § 40A.01. Minn. Stat. § 138.71.

Minn. Stat. § 462.351.

See LMC information memo, *Planning Commission Guide*.  
Minn. Stat. § 462.353.

- Building location, height, width, bulk.
- Type of building foundation.
- Number of stories, size of buildings and other structures.
- The percentage of lot space which may be occupied.
- The size of yards and other open spaces.
- The density and distribution of population.
- Soil, water supply conservation.
- Conservation of shore lands.
- Access to direct sunlight for solar energy systems.
- Flood control.

## **B. Legal authority to zone**

Statutory and Home Rule Charter Cities are granted the authority to adopt a zoning ordinance by the Minnesota and US Supreme Court cases and by the Municipal Planning Act found in Minnesota Statutes. The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance.

Cities in the metropolitan area are governed by the Metropolitan Land Planning Act. The metro area is defined as the cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding New Prague) and Washington. The Metropolitan Planning Act also imposes certain mandatory zoning and regulatory requirements on metropolitan cities.

Cities are also granted additional authority by state statute to impose land use controls on development through the Minnesota Water Laws, the Floodplain Management Laws, the Minnesota Wild and Scenic Rivers Act, the Agricultural Land Preservation laws and the Minnesota Historic District Act to name only a few.

## **C. Role of comprehensive planning in zoning ordinance adoption**

All cities have the authority to adopt zoning regulations, though cities may follow different paths to adoption of an ordinance. Some cities may engage in extensive formal planning, including the drafting of a comprehensive plan, prior to ordinance adoption, while others may need to follow a more immediate process.

### **1. Comprehensive planning**

The adoption of a comprehensive plan is a common first step in the development of a zoning ordinance.

## RELEVANT LINKS:

*Roselawn Cemetery v. City of Roseville*, 689 N.W. 2d 254 (Minn. Ct. App. 2004).

Minn. Stat. § 462.352, subd. 5.

Minn. Stat. § 462.355, subd. 1a.

Minn. Stat. § 473.121, subd. 2.

Minn. Stat. § 473.864, subd. 2.

*Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

Minn. Stat. § 462.357, subd. 1h.

Minn. Stat. § 462.355, subd. 1.

Minn. Stat. § 103G.005, subd. 10b.

See LMC information memo, *Planning Commission Guide*. For more information on Comprehensive Planning see *Under Construction* by MN Department of Administration.

*Concept Properties, LLP v. City of Minnetrista*, 694 N.W.2d 804 (Minn. Ct. App. 2005).

*Larson v. Washington County*, 387 N.W.2d 902 (Minn. Ct. App. 1986).

Minnesota statutes grant all cities authority to adopt a formal comprehensive plan for their community. A comprehensive plan is a lengthy document that formally establishes a blueprint for the city's long-range (usually between five and 15 years) social, economic, and physical development.

In metropolitan area cities, including cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague) and Washington, the adoption of a comprehensive plan is mandatory under the Metropolitan Land Planning Act. All other cities have the option of adopting a comprehensive plan, but are not required to do so.

Non-metropolitan cities located in counties or watersheds that contain 80 percent of their presettlement wetlands are subject to the President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land (hereinafter the "T. Roosevelt Memorial Preservation Act"). These cities are not required to engage in comprehensive planning, but must meet the requirements of the T. Roosevelt Memorial Preservation Act by adopting certain findings of fact when adopting a comprehensive plan.

### a. Reasons to adopt a comprehensive plan

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice for a couple of reasons.

First, the comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment and safe and healthy community. 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 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.

**RELEVANT LINKS:**

See LMC information memo, *Planning Commission Guide*.

*Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn.2006).

See Part VII, *Other land use controls available for cities*.

Minn. Stat. § 462.357, subd. 1.

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 written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

**b. Relation of the comprehensive plan to zoning**

Zoning and planning are not the same thing. Municipal planning is a lengthy process of collecting and analyzing economic, social and physical data about a city and organizing this information into a formal set of goals and standards for community development. The comprehensive plan is a document that embodies the city's vision for the future, including its aspirations and plans for future development that may not appear for many years to come.

Once a comprehensive plan is adopted, the city needs a means of attaining its development goals as stated in the comprehensive plan. Zoning is one tool for implementing a comprehensive plan. In cities subject to the Metropolitan Planning Act, zoning directives must harmonize with and not contradict the city's comprehensive plan.

It is important to emphasize that zoning is merely one of the tools available to a city to assist implementing a comprehensive plan. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its goal of orderly development.

**II. Drafting a zoning ordinance**

Zoning regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. A zoning ordinance consists of both text and maps.

**A. Typical zoning ordinance provisions and concepts**

The zoning ordinance is usually a lengthy document that consists of three major sections, an administrative section, a performance standards section and a zoning district section.

**RELEVANT LINKS:**

Sample Definitions Section.

Sample Performance Standards Section.

Sample Zoning District Section.

Sample Permitted and Conditional Uses.

**1. The administrative section**

The administrative section sets forth administrative procedures for implementing the zoning ordinance, including the grant or denial of requests for zoning permits and variances. The administrative section usually contains a fee schedule, an expansive definition section to help interpret and apply the ordinance, a procedure section and a penalty section.

**2. The performance standards section**

The performance standard section sets forth regulations that are uniformly applicable to all districts, such as noise, property maintenance, parking, fencing and signage standards.

**3. The zoning district section**

The zoning district section establishes the different types of districts, for example residential, commercial or industrial/manufacturing, and sets the regulations for each district. Districts may also be designated reflecting desired density in addition to use, such as residential-1 (usually low density single family homes), residential-2 (usually single family homes and twin homes), residential-3 (usually apartment buildings), etc. Modern zoning may also feature “mixed-use” or “hybrid” districts where traditional use categories are mixed, for example a downtown residential/commercial district. The district section is often the lengthiest section of the zoning ordinance, depending on the number of districts established in the city. This section usually also contains the following concepts for each district:

**a. Use designations**

Use Designations are text (usually in a list form) that specify the permitted, conditionally permitted and prohibited uses for a district or zone. There are several types of uses generally found in a zoning ordinance:

**RELEVANT LINKS:**

Minn. Stat. § 462.3595.

Minn. Stat. § 462.3597.

Sample Setback Requirement Diagram.

Sample Height Requirement Diagram.

- Permitted Uses: Uses that are allowed in a district as a matter of right without further need for review or approval of the city
- Prohibited Uses: Uses that are not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances will simply provide that any uses not specifically listed are deemed prohibited.
- Conditional Uses: Uses that are permitted, after approval of the city, if conditions listed in the ordinance are met. Some zoning ordinances use the term “special use” instead of conditional use. The Municipal Land Use Planning Act does not recognize special use permits, and the courts would likely apply the same requirements for their issuance as those for conditional uses specified above.
- Interim Uses: Uses that are permitted for a limited amount of time (contain a sunset provision), after approval of the city, if conditions listed in the ordinance are met.
- Accessory Uses: Uses that are permitted or conditionally permitted to serve a permitted or conditionally permitted use. Generally the accessory use will not be permitted absent the primary use. For example, a tool shed is a standard accessory use in a residential zone.

**b. Setbacks, height and density requirements**

- Setbacks requirements: Establish the minimum horizontal distance between a structure and the lot line, road, highway or high-water mark (if the property abuts shore land).
- Height requirements: Establish maximum and/or minimum height requirements for structures and/or their attachments (such as antennas, cupolas, etc).
- Density requirements: Establish the number of structures or units allowed per lot or area.

**4. Additional provisions**

Some ordinances may contain, depending upon the individual needs of the city, additional provisions, though the quality of a zoning ordinance does not depend upon the quantity or complexity of the provisions it contains (nor the number of districts established).

Cities should strive for a zoning ordinance that meets their goals as simply and efficiently as possible. Above all, a zoning ordinance should be a practical document that is as enforceable as possible.

Depending on the individual needs of the city, a zoning ordinance may also contain provisions for the following:

## RELEVANT LINKS:

Sample Overlay District.

Minn. Stat. § 103F.121.  
Minn. R. 6120.5000.  
See MN DNR sample floodplain management ordinances.  
See also MN DNR for more information and resources on floodplain management.

Minn. Stat. § 103F.335.

See also MN DNR website for more information on MN Wild and Scenic Rivers.

Minn. Stat. § 103F.221.  
Minn. R. 6120.2500 – 3900.  
See shoreland management ordinance, DNR Model.  
See also MN DNR website for more information and resources on shoreland management.

- Mixed use or hybrid districts. Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.
- Planned Use Development (PUD) or cluster development: A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.
- Overlay districts: A district that is developed to be imposed over or “overlay” one or more existing zoning districts, which impose additional zoning requirements. Overlay districts may be developed with a specific land area in mind or they may be developed to “float” until they are anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

## 5. Natural resource protection and flood plain provisions

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the zoning ordinance may also contain the following:

- Floodplain requirements: Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- Wild and scenic rivers development requirements: Wild and Scenic Rivers development ordinances are required by state law for cities that have shore land located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.
- Shoreland development requirements: For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as State standards and are subject to the review of the Commissioner of Natural Resources.

## RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 1.  
Minn. Stat. § 103G.005, subd. 10b.

- President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land. Non-metropolitan cities subject to the T. Roosevelt Memorial Preservation Act when adopting or amending a zoning ordinance, must consider restricting new residential, commercial, and industrial development in a manner consistent with the Act's goal of preserving land from development sprawl. Cities are not required to adopt zoning practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process considered the Act's stated goals.

## B. Drafting a readable zoning ordinance

Zoning ordinances can be lengthy documents, but from the first to last page, emphasis should be placed upon drafting a well organized ordinance that communicates clearly. A good zoning ordinance:

- Makes information easy to find.
- Is easy to administer and amend.
- Uses plain, well-defined language that reduces the potential for erroneous or controversial interpretations.

### 1. Suggestions for drafting a readable zoning ordinance:

- Use graphics, tables, maps and illustrations wherever possible.
- Use a consistent numbering system or other system of organization.
- Define terms, words, and phrases, preferably in a separate "definitions" section, so that there is minimal need for interpretation of the text.
- Pick terms and use terms consistently. For example do not interchange the word "residence," with "house," "dwelling" and "single-family home." Instead, pick your preferred term, define the term in your definitions section and use the same term throughout the ordinance.
- Avoid legalese such as "aforesaid," "hereby," and "herewith."
- Avoid archaic and/or potentially offensive terms. For example using, "trailer court" instead of "manufactured home park" or "old folks home" instead of "residential living facility."
- Avoid establishing too many districts and other impractical complexity.
- Be careful about copying neighboring cities' zoning provisions, especially in a piece-meal manner. A zoning ordinance fitting one community may be a bad fit for another. When only portions of an ordinance are copied and utilized, terms and definitions may not remain consistent.

**RELEVANT LINKS:**

*Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604 (Minn. 1980).  
*Lowry v. City of Mankato*, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).  
*Village of St. Louis Park v. Casey*, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

*Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604 (Minn. 1980).

*Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

Sample Definitions Section.

## **2. The importance of clear, unambiguous ordinance language**

The unfortunate consequence of unclear or ambiguous language in a zoning ordinance is public controversy and loss of efficiency. In some instances, a city may find itself in court simply on the issue of whether the city interpreted its own ambiguous ordinance correctly. In the past the courts have been asked to resolve controversies over such undefined terms in an ordinance as:

- “lawn and garden center,”
- The words "accessory", "subordinate," "incidental," and "main,"
- “structure”

When a court is called upon to resolve a controversy over an undefined or ambiguous word or phrase in a city ordinance, the court may not always interpret the ordinance in the manner the city would prefer. The court may, but is not required, to give deference to the city’s interpretation of the ordinance.

In interpreting zoning ordinances, the court will attempt to find the plain and ordinary meaning of the terms. The court will interpret any doubtful language against the city and in favor of the landowner.

Only in limited circumstances, where the language is so ambiguous on its face that a plain meaning cannot be understood, will the court consider evidence of the city’s intent in drafting the ordinance.

The best way to avoid the time and expense of a lawsuit over basic terms in a zoning ordinance is clear drafting from the outset. A definition section is essential to any zoning ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section.

## **C. Drafting a legally defensible zoning ordinance**

In drafting a zoning ordinance, cities must also draft an ordinance that conforms to the requirements of state and federal law. In addition, cities must draft ordinances that are consistent with state and federal court rulings.

## RELEVANT LINKS:

*Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757, (Minn. 1982).  
*DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997).  
Minn. Stat. §§ 462.351 - 462.365.  
Minn. Stat. §§ 473.851 - 473.871.  
*Nordmarken v. City of Richfield*, 641 N.W.2d 343 (Minn. Ct. App. 2002).

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. Stat. § 462.357, subd. 8.

Minn. Stat. § 462.357, subd. 7.

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).

## 1. The Municipal Planning Act

Cities have a wide range of discretion in developing a zoning ordinance. City zoning requirements can range from very complex to minimal. However, all city zoning authority is granted to cities by and subject to the Municipal Planning Act. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act.

It is important to note that the Municipal Planning Act has specific provisions related to local zoning control of:

- Manufactured home parks
- Manufactured homes
- Existing legal nonconformities at the time of zoning ordinance adoption
- Feedlots
- Earth sheltered construction as defined by MN Stat. 216C.06
- Relocated residential buildings
- State licensed residential facilities or housing services registered under MN Stat. 144D 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 9502.0315 to 9502.0445 to serve 14 or fewer children in single family residential districts
- State licensed residential facilities serving 7-16 persons in multifamily residential districts
- Licensed day care facilities serving 13-16 persons in multifamily residential districts
- Solar energy systems

Cities cannot adopt local ordinances which contradict the explicit provisions of the Municipal Planning Act.

## RELEVANT LINKS:

See also Section III-D,  
*Zoning to protect natural  
resources or preserve open  
spaces and green space.*

Minn. Stat. §§ 327.31 -  
327.35.  
Minn. Stat. § 462.357,  
subd.1.  
For more information on  
manufactured homes and  
parks see the LMC  
information memo,  
*Manufactured Homes and  
Zoning: Comprehensive  
Advice.*

Minn. Stat. § 327.32, subd. 5.

Minn. Stat. § 462.357, subds.  
1a, 1b.  
See Section III-A,  
*Establishing permitted and  
conditional uses.*

## 2. Additional state law requirements

Cities must also draft their zoning ordinances to meet the requirements of state law outside of the Municipal Planning Act. The following is not a comprehensive list of state laws that effect city zoning, but discusses some of the most common limitations of city zoning authority.

### a. Flood plains, shoreland and wild and scenic rivers

Some land is subject to special protection under state law because it contains important natural resources, such as lakes and rivers. Cities are generally required to adopt standards for development of these types of land areas that meet established state standards. Generally such ordinances are subject to the review of the State through the Commissioner of Natural Resources.

### b. Manufactured homes

No city zoning regulation may prohibit manufactured homes built in conformance with the manufactured home building code and which comply with all other zoning ordinances promulgated pursuant to state law.

Cities can apply architectural and aesthetic requirements to manufactured homes, but only if the same architectural and aesthetic requirements also apply to all other single-family homes in the zoning district, not just to manufactured homes.

### c. Manufactured home parks

A manufactured home park must be allowed as a conditional use in any zoning district that allows the construction or placement of a building used or intended to be used by two or more families. Standards for granting the conditional use should be explicitly stated in the city ordinance.

Cities cannot enact, amend, or enforce a zoning ordinance that has the effect of altering the existing density, lot-size requirements, or manufactured home set back requirements in any manufactured home park constructed before January 1, 1995, if the manufactured home park, when constructed, complied with the then existing density, lot-size and setback requirements, if any.

## RELEVANT LINKS:

42 U.S.C. § 2000cc.

See LMC information memo,  
*Zoning for Religion*.

*City of Woodinville v. Northshore United Church of Christ*, 211 P.3d 406 (Wash. 2009).  
*McGann v Inc. Vill. Of Old Westbury*, 719 N.Y.S.2d 803 (N.Y. Sup. 2000).

*Williams Island Synagogue, Inc. v. City of Aventura*, 358 F.Supp.2d 1207 (S.D. Fla. 2005).  
*Guru Nanak Sikh Society of Yuba City v. County of Sutter*, 326 F.Supp.2d 1140 (E.D. Cal. 2003).  
*Cottonwood Christian Center v. Cypress Redevelopment Agency*, 218 F.Supp.2d 1203 (C.D. Cal. 2002).  
*Civil Liberties for Urban Believers v. City of Chicago*, 342 F.3d 752 (C.A.7 (Ill.) 2003).

### 3. Federal law considerations: The Religious Land Use and Institutionalized Persons Act

The Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000 provides that no government entity shall impose or implement a land use regulation in a manner that puts a substantial burden on the religious exercise of a person, religious assembly or religious institution, unless the government can show the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. This means that a religious use may be, in some circumstances, exempted from city zoning requirements if the regulation substantially burdens the religious organization or person's exercise of religion.

RLUIPA also provides that no government may impose or implement a land use regulation in a manner that:

- Treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution. For example, a zoning ordinance that allows community centers and fraternal organization centers in a particular district, but not a religious center (such as a church, mosque or synagogue), whose use would be strikingly similar to the other allowed uses.
- Discriminates against any assembly or institution on the basis of religion or religious denomination.
- Totally excludes religious assemblies from their jurisdiction or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

Activities beyond worship services for religious institutions may potentially be protected by the RLUIPA, including schools and childcare. However, this is an unsettled area of the current law.

Since RLUIPA was adopted in 2000, numerous cases have been brought in federal court concerning the law's application to various city zoning requirements. However, federal courts in the 8th Circuit (which includes Minnesota) have not ruled on many RLUIPA cases. If a city has concerns about RLUIPA, the city should consult its attorney for specific guidance.

## RELEVANT LINKS:

47 U.S.C. § 332(c)(7).

47 U.S.C. § 303 (v).  
47 C.F.R. § 25.104.

*Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 47 S. Ct. 114 (1926).

*Kiges v. City of St. Paul*, 240 Minn. 522, 62 N.W.2d 363 (Minn. 1953).  
*State ex rel. Berndt v. Iten*, 259 Minn. 77, 106 N.W.2d 366 (Minn. 1960).

## 4. Federal law considerations: Telecommunications Act of 1996

The federal Telecommunications Act of 1996 influences local zoning regulation of wireless telecommunications towers and antennas. Under the Act, local governments may generally regulate the placement, construction, and modification of cell towers through zoning ordinances and land use regulations. However, local zoning regulations may not unreasonably discriminate among providers of functionally equivalent services. Local zoning regulations also may not prohibit or have the effect of prohibiting the provision of wireless services. Under the Act any decision to deny a request to place, construct or modify cell towers must be in writing and supported by substantial evidence in the written record.

In addition, cities may not regulate the placement, construction or modification of cell towers on the basis of the environmental effects of radio frequency emissions to the extent they comply with the Federal Communication Commission's regulations. To avoid conflicts with federal law, the city should consult the city attorney before adopting zoning provisions that regulate telecommunication towers and antennas.

The Federal Communications Commission has exclusive jurisdiction over direct to home satellite dishes. Its regulations preempt local ordinances that prohibit or regulate satellite dishes of one meter or less in all areas and two meters or less in commercial areas. Cities may apply to the FCC for a waiver to allow local regulation of satellite dishes upon a showing by the applicant that local concerns of a highly specialized or unusual nature create a necessity for local regulation

## 5. Federal and state constitutional concerns

Zoning regulations limit the ability of landowners to use their property in any manner they wish.

While both the state and federal constitutions provide protections to landowners from government seizures of land (takings), the courts have long upheld zoning regulations as a reasonable use of a government's police power to protect the health, safety and welfare of the public. However, there are still some federal and state constitutional restraints on city zoning authority.

## RELEVANT LINKS:

*State, by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978).  
*Amcon Corp. v. City of Eagan*, 348 N.W.2d 66 (Minn. 1984).

*Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006).  
*State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949).  
*County of Morrison v. Wheeler*, 722 N.W.2d 329 (Minn. Ct. App. 2006).  
See Section V-C, *Standards for reviewing zoning applications: limits on city discretion*.

*State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949).

*State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949).

The adoption or amendment of a zoning ordinance is considered a legislative decision of the city council. Courts normally give legislative decisions great deference and weight, but the court will on occasion set aside or intervene in city zoning decisions if two important constitutional restraints in the federal and state constitution are violated. First, the courts may overrule a city zoning decision, when it determines that a zoning ordinance is unsupported by any rational basis related to promoting public health, safety, morals, or general welfare. Usually, in these cases the court finds that the city's actions were arbitrary and/or capricious. Second, when a zoning ordinance denies the landowner practically all reasonable use of the land, resulting in a "taking" of the land without just compensation; the court may order the city to pay compensation to the affected landowner.

### a. Legislative authority must be reasonable

Under the federal and state constitution, zoning authority must be used in a manner that is reasonable and free from arbitrariness or discrimination. A city zoning decision is reasonable (not arbitrary), when it bears a reasonable relationship to the purpose of the zoning ordinance.

Zoning ordinances may be found to be unreasonable when they appear arbitrary. When a zoning classification treats similarly situated individuals differently, there must be rational reason for the unequal treatment that bears a relation to the purposes of the ordinance (protection of the health, safety and welfare of the public). If no such reasonable or rational justification can be found, the court may decide that the city has been arbitrary.

For example, the Minnesota Supreme Court invalidated provisions of one zoning ordinance that allowed public schools, but not private schools, to be located in a residential zone. The court ruled, in that instance, that the ordinance was arbitrary, because "the distinction between the different kinds of schools, upon which the classification made in the ordinance rests, is not based upon alleged evils which it is claimed exist in the case of private schools and do not exist in the case of public or parochial schools."

In the courts view two very similar entities (public and private schools) were being treated differently under the law. This difference was not reasonably related to protecting the health, safety and welfare of the public. As a result, the distinction was ruled to be arbitrary.

## RELEVANT LINKS:

*U. S. Const. Amend. V.*  
*Minn. Const. art. I § 13.*  
*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 43 S. Ct. 158 U.S. 1922.  
See House Research Memo, *Eminent Domain: Regulatory Takings*.

*Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007).  
*Czech v. City of Blaine*, 253 N.W.2d 272 (Minn. 1977).  
*Pearce v. Village of Edina*, 118 N.W.2d 659 (Minn. 1962).

### **b. A zoning designation may not be so restrictive as to deny all reasonable use of the land**

Both the U.S. Constitution and the Minnesota Constitution forbid taking private property for public use without just compensation. Zoning regulations may be considered “takings” if a regulation goes too far. This is generally termed a “regulatory taking.”

Generally, a zoning scheme will constitute a regulatory taking only if it denies a landowner all economically viable or beneficial use of property or, stated differently, all reasonable use of property. However, not all diminution of property values will be considered a taking. Zoning often has the side effect of increasing the value of some property while decreasing the value of other property. To be ruled a regulatory taking, the regulation must be so severe as to render the property practically useless for the purpose for which it is zoned. For example, a regulation that would prohibit a residence in a strictly residential zone. In these cases, the court will order the city to pay the affected landowner compensation for the land lost to the regulatory taking.

### **D. Obtaining technical assistance in ordinance drafting**

The Municipal Planning Act grants cities the authority to hire staff, including professional planners and attorneys, to assist in the drafting of a zoning ordinance. Local city officials and staff often have in-depth knowledge regarding the community and its needs, but lack expertise in the many technical and legal aspects of zoning. Professional planners and the city attorney can contribute this needed information to the zoning ordinance adoption process and, while not required, are highly recommended. Because zoning is regulated by numerous diverse state and federal laws and court cases, at a minimum, the assistance of the city attorney is necessary to help the city evaluate whether its ordinance complies with all applicable laws.

## **III. Common issues in ordinance drafting**

Zoning ordinances can accomplish a great deal of good for a community. Drafting a zoning ordinance seemingly opens up many possibilities for dealing with concerns or even outright problems and challenges faced by a particular community.

However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to an initial drafting of a zoning ordinance.

## RELEVANT LINKS:

Sample Permitted and Conditional Uses.

See LMC information memo, *Land Use Conditional Use Permits*.

*Naegle Outdoor Advertising Co. of Minn. v. Village of Minnetonka*, 162 N.W.2d 206 (Minn. 1968).

*Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn. 1979).

### A. Establishing permitted and conditional uses

In drafting a zoning ordinance, cities often struggle to decide what their permitted and conditional uses should be for each zoning district. For each district created by the zoning ordinance, the ordinance typically provides a list of the permitted and conditional uses. Appropriate uses will change from district to district. Uses designated as “permitted” will be automatically allowed with no need for further application or review (related to zoning) by the city. Therefore, the list of permitted uses should only contain uses about which the city has no reservations.

Conditional uses are also a form of authorized permitted use, provided that the applicant can meet the conditions specified in the ordinance. Uses specified as conditional are uses which are generally favorable and desired, but may also pose potential hazards that need to be mitigated (for example a gas station on a corner in a residential neighborhood). As a result of these potential hazards, council review is necessary.

It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all of the conditions and requirements of the city’s ordinance and will not be detrimental to the health, safety and welfare of the public. As a result, the list of conditional uses should only contain uses that the city is certain should be allowed once appropriate conditions are met.

### B. Aesthetic zoning requirements

Aesthetic zoning seeks to create a pleasant appearance in a district or community. Advocates for aesthetic zoning assert that it confers a beneficial effect on property values and on the well-being of its residents. For example, many cities address a host of aesthetic concerns through “design standards” section(s) in their zoning ordinance. Design standards often specify the type of building materials (such as brick or stone) that should be used in that district.

Traditionally aesthetic zoning has been criticized as not adequately related to the protecting the health and safety of the public. However, the Minnesota Supreme Court has ruled the “mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance.” Furthermore, the courts recognize that local city officials are in the best position to determine whether aesthetic regulations promote the community’s well-being.

Generally, zoning ordinances that contain aesthetic regulations will be upheld if the council has made findings that they are reasonably tied to promoting a community’s health safety and welfare in addition to mere aesthetic concerns.

## RELEVANT LINKS:

Sample Performance Standards Section.

*Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623 (Minn. 2007).  
*Mendota Golf, LLP v. City of Mendota Heights*, 708 N.W.2d 162 (Minn. 2006).  
*Pine County v. State, Dept. of Natural Resources*, 280 N.W.2d 625 (Minn. 1979).  
Minn. Stat. § 103F.335.  
Minn. Stat. § 103F.221.  
See Section *V-F-1-c Applicability* for more information on regulatory takings.

Sample Parking Requirements.

Minn. Stat. § 138.74.

### C. Performance standards

Performance standards are a common feature of zoning ordinances. Typically, the performance standard section of the ordinance sets forth regulations governing the uses within districts, such as noise, vibration, smoke, property maintenance (i.e. outdoor storage), parking, fencing and signage standards. Proposed uses that cannot meet the performance standards are not allowed in the district. Performance standards typically are adopted to apply to all districts. However, particular districts, such as industrial districts, may call for specific standards.

### D. Zoning to protect natural resources or preserve open spaces and green space

The Minnesota Supreme Court has ruled that a municipality has legitimate interests in protecting open, green and recreational space for the public through comprehensive planning and zoning. City ordinances use a variety of methods to promote open space and green space. A common zoning tool is cluster zoning. Cluster zoning groups new homes onto part of the development parcel, so that the remainder can be preserved as unbuilt open space. However, it is important to note that zoning regulations (including regulations mandating green or open spaces) that deny an owner all practical use of their property may be considered a regulatory taking.

### E. Parking requirements

Cars are ubiquitous to American life and off-street parking requirements are a common feature of city zoning ordinances. Off-street parking requirements may reduce congestion on city streets, thereby improving safety and aesthetics.

Typically a city zoning ordinance will require a certain number of off-street parking spaces for each type of use. For example, an ordinance may require a landowner in a commercial district to provide four parking spaces per 1,000 sq ft of useable floor space. Many cities find it helpful to use a table to illustrate the city's parking requirements in their zoning ordinances.

### F. Historic Preservation

Historic preservation ordinances seek to protect and maintain buildings and sites of significance to history and pre-history, architecture and culture. Certain cities, which contain historic districts established by state statute, are specifically empowered by state law to create zoning regulations for their historic districts that:

## RELEVANT LINKS:

Minn. Stat. § 138.73.

*State, by Powderly v. Erickson*, 285 N.W.2d 84 (Minn. 1979).

See LMC information memo, *Regulation of Adult Entertainment Businesses*.

Minn. Stat. § 617.242.

*Northshor Experience, Inc. v. City of Duluth, MN*, 442 F.Supp.2d 713 (D. Minn. 2006).

- regulate the construction, alteration, demolition and use of structures within the district.
- prevent the construction of buildings of a character not in conformity with that of the historic district.
- allow the city to remove blighting influences, including signs, unsightly structures and debris, incompatible with the maintenance of the physical well-being of the district.
- allow the city “to adopt other measures as necessary to protect, preserve and perpetuate the district.”

Currently there are 25 official historic districts designated by state law.

Cities that do not contain official historic districts, as designated by state law, may also preserve their historic properties and districts through local zoning ordinances. Often this is accomplished by establishing a standalone district or an overlay district with specific design standards. The Minnesota Supreme Court has upheld historic preservation ordinances as a reasonable use of the city’s police powers to protect the health, safety and welfare of the public.

## G. Zoning regulation of adult uses

Adult uses typically refer to bookstores, theaters, bars, and other establishments where sexually explicit books, magazines and videos are sold or sexually explicit films or live performances are viewed. Cities can control the location of adult uses through zoning ordinances to reduce the negative secondary effects of adult uses.

A state law, enacted in 2006, requires that anyone intending to open an adult use business provide notice, 60 days in advance, to the city where the business will locate. The law includes numerous other provisions focused on regulation of adult uses businesses. The new law is the subject of an injunction issued by a federal district court; the court finds that questions about the law’s constitutionality are valid and rules that the city may not enforce the new law. Until the constitutional questions regarding the new law are resolved, cities probably should not rely on it as the sole mechanism for regulating adult entertainment establishments.

Instead, cities may consider taking proactive measure to adopt local adult use regulations. However, adopting any regulations of adult uses is legally complex and the city attorney should be involved in the drafting of any adult use ordinances.

**RELEVANT LINKS:**

Minn. Stat. § 462.357, subd. 1g.

## **H. Restricting Feedlots**

Zoning ordinances that regulate feedlots must comply with certain procedures outlined in the Municipal Planning Act. When a city considers adopting a new or amended feedlot ordinance, it must notify the Minnesota Pollution Control Agency and commissioner of Agriculture at the beginning of the process.

A local zoning ordinance that requires a setback for new feedlots from existing residential areas must also require that new residential areas have the same setbacks from existing feedlots in agricultural districts. This requirement does not pertain to a new residence built to replace an existing residence. A city may grant a variance from this requirement.

At the request of the city council, the city must prepare a report on the economic effects from specific provisions in the feedlot ordinance. Assistance with the report, in the form of a template, is available from the commissioner of Agriculture, in cooperation with the Department of Employment and Economic Development. Upon completion, the report must be submitted to the commissioners of Employment and Economic Development and Agriculture along with the proposed ordinance.

## **I. Extra-territorial zoning and joint planning**

### **1. Extra-territorial zoning**

A city's zoning authority may be extended by ordinance to unincorporated territories within two miles of its boundaries, unless that area falls within another city, county or township that has adopted its own zoning regulations. Where zoning is extended, ordinances may be enforced in the same manner and to the same extent as within the city's corporate limits.

### **2. Joint planning**

Joint planning may also assist cities in coordinating their land use efforts with neighboring townships. State statute authorizes the creation of a joint planning board, when requested by a resolution of a city, or county or town board.

The joint planning board exercises planning and land use control authority in the unincorporated area within two miles of the corporate limits of a city. Members of the board are appointed by each of the participating governmental units to equally represent the governmental units that comprise the board.

Minn. Stat. § 462.357.  
A.G. Op. 59-A-32 (Aug. 18, 1995).

Minn. Stat. § 462.3585.

## RELEVANT LINKS:

*Dobbins v. City of Los Angeles*, 195 U.S. 223, 25 S. Ct. 18, 49 L. Ed. 169 (1904).  
*Pacific Palisades Assn. v. City of Huntington Beach*, 196 Cal. 211, 237 P. 538.  
*Charnofree Corp. v. City of Miami Beach (Fla.)*, 76 So.2d 665 (Fla. 1954).  
*State ex rel. Killeen Realty Co. v. City of East Cleveland*, 108 Ohio App. 99, 153.E.2d 177 (Ohio 1959).  
*Linden Methodist Episcopal Church v. City of Linden*, 113 N.J.L. 188, 173 A. 593 (N.J. 1934).

A.G. Op. 59-A-32 (Jan. 25, 2002).  
*Pilgrim v. City of Winona*, 256 N.W.2d 266 (Minn. 1977).

Minn. Stat. § 462.357, subd. 3. For information on conducting hearings, see LMC information memo, *Public Hearings*.

## J. Zoning ordinances that limit competition or protect local business from being displaced by new business

A city's zoning authority is based upon its police power to protect the public's health, safety and welfare. Zoning to protect private economic interests is problematic, because it is not generally perceived to be related to the public's health and welfare. In general, the federal courts have ruled that cities should not adopt zoning regulations with the sole intent to protect enterprises from competition in a particular district or to create monopolies or to make certain areas subservient to others.

Cities may encounter this issue in the zoning drafting process, when specifying permitted and conditional uses for a district. More commonly, the issue will arise in the context of reviewing a particular zoning application. For example, a city may wish to not grant a CUP for a new bank in the city, because officials perceive that there are too many banks in an area or that the a new bank may put long-established businesses out of business. This type of economic favoritism is not permitted in zoning ordinance drafting or application.

## IV. Zoning ordinance adoption and/or amendment

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities. An amendment to a zoning ordinance may be initiated by the city council, the planning commission, or by petition of affected property owners.

An amendment that is not initiated by the planning commission must be referred to it, if there is one, for study and report. The city council may not act on such an amendment until it has received the recommendation of the planning commission or until 60 days have passed from the date the amendment was referred to the planning commission without a report.

### A. Public hearings and adoption

A public hearing must be held by the council or the planning commission (if one exists) before the city adopts or amends a zoning ordinance.

## RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 3.  
See LMC information memo *Newspaper Publication*.

Minn. Stat. § 462.357, subds. 2, 5.  
A.G. Op. 59-A-32 (Jan. 25, 2002).

Minn. Stat. § 412.191, subd. 4.  
Minn. Stat. § 331A.02.  
Minn. Stat. § 331A.04.  
See Handbook, *Meetings, Motions, Resolutions, and Ordinances* for more information on publishing ordinances in summary form.

### 1. Notice and hearing

A 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.

If an amendment to a zoning ordinance 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 completely or partly within 350 feet of the property to which the amendment applies. However, failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with this subdivision has been made.

### 2. Adoption

Zoning ordinances must be adopted by a majority vote of all of the members of the council. For example, this would mean three votes on a five member council. 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.

### 3. Publication

After adopting or amending a zoning ordinance, the council must publish or summarize it in the official newspaper.

**RELEVANT LINKS:**

See LMC information memo,  
*The 60-Day Rule:  
Minnesota's Automatic  
Approval Statute.*

Minn. Stat. § 15.99.  
*Manco of Fairmont v. Town  
Bd. of Rock Dell Township*,  
583 N.W.2d 293 (Minn. Ct.  
App. 1998).  
*Hans Hagen Homes, Inc. v.  
City of Minnetrista*, 728  
N.W.2d 536 (Minn. 2007).

Minn. Stat. § 15.99, subd.  
1(c).  
Minn. Stat. § 15.99, subd.  
2(a).  
Minn. Stat. § 462.358, subd.  
3b.  
*Advantage Capital Mgmt. v.  
City of Northfield*, 664  
N.W.2d 421 (Minn. Ct. App.  
2003).

Minn. Stat. § 15.99, subd.  
1(c).

Minn. Stat. § 15.99, subd.  
3(a).

Minn. Stat. § 15.99, subd.  
3(c).

## **V. Zoning ordinance administration**

### **A. The 60-Day Rule**

Most importantly in administering a zoning ordinance, cities must remember that they 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.

#### **1. Scope of the rule**

The rule applies to a “request a related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning,” and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for subdivision and plat approvals, since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

#### **2. Applications**

A request must be submitted in writing on the city’s application form, if one exists. A request not on the city’s form must clearly identify on the first page the approval sought. The city may reject as incomplete a request not on the city’s form, if the request does not include information required by the city. The request is also considered incomplete if it does not include the application fee.

The 60-day time period does not begin to run if the city notifies the landowner in writing within 15 business days of receiving the application that the application is incomplete. The city must also state what information is missing.

If a city grants an approval within 60 days of receiving a written request – and the city can document this - it meets the time limit even if that approval includes certain conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded. An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

## RELEVANT LINKS:

*Tollefson Dev., Inc. v. City of Elk River*, 665 N.W.2d 554 (Minn. Ct. App. 2003).

Minn. Stat. § 15.99, subd. 2(a).

*Johnson v Cook County*, 786 N.W.2d 291 (Minn. 2010).  
Minn. Stat. § 15.99, subd. 2(c).

*Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W. 2d 536 (Minn. 2007).

Minn. Stat. § 15.99, subd. 2(b).

Minn. Stat. § 15.99, subd. 3(f).

*American Tower, L.P. v. City of Grant*, 636 N.W.2d 309 (Minn. 2001).

*Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002).

Minn. Stat. § 15.99, subd. 3(g).

When a zoning applicant materially amends their application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

### 3. Denials

If an agency or a city denies a request, it must give written reasons for its denial at the time it denies the request.

When a multimember governing body such as a city council denies a request, it must state the reasons for denial on the record and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

### 4. Extensions

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an application, if the city follows specific statutory requirements. In order to avail itself of an additional 60 days, the city must give the applicant:

- Written notification of the extension before the end of the initial 60-day period;
- The reasons for extension; and
- The anticipated length of the extension.

The courts have been particularly demanding on local governments with regard to this requirement and have required local governments to meet each element of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be specific in order to inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason. As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant request for an extension, this should be thoroughly documented.

**RELEVANT LINKS:**

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(d), (e).

Minn. Stat. ch. 116D.  
Minn. R. ch. 4410.

Minn. Stat. § 15.99, subd. 2(a), (e).

See LMC information memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute.*

Once the city has granted itself one 60 day extension, additional extensions must be negotiated with the applicant. A city can only go beyond 120 days if it gets the approval of the applicant. The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant may also ask for an additional extension by written request.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application if the process will make it impossible for the city to act within 60 days. The environmental review process is an example. If the city or state law requires the preparation of an environmental assessment worksheet (EAW) or an environmental impact statement (EIS) under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

Cities should adopt a procedure or set of procedures to ensure planning staff, the planning commission, and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

**B. Organizational structure for review of zoning applications**

The pressures posed by the 60-Day Rule mandate that any city with a zoning ordinance have in place an efficient system of zoning administration. Generally, this system is composed of both staff and city officials, who ensure that zoning applications are reviewed and answered in a timely manner and that zoning ordinance provisions are enforced.

**1. The zoning administrator**

Typically, a city will have a staff person who acts as the “Zoning Administrator” who is the first point of contact with the public on zoning matters and provides and receives zoning application forms.

**RELEVANT LINKS:**

See LMC information memo  
*Planning Commission Guide.*

Minn. Stat. § 462.354, subd.  
1.

Minn. Stat. § 462.357, subd.  
3.

Minn. Stat. § 462.357, subd.  
3.

Minn. Stat. § 462.354, subd.  
2.

Generally, this person will also perform a preliminary review of the application, refer the application to the Planning Commission (if one exists) or City Council for review and offer one or both bodies a staff report reviewing the adequacy of the application. Depending on the size of the city and the number of zoning applications the city typically receives, the position of zoning administrator may be a full-time position or a part-time position. In some cities, the city clerk simply bears the additional title of zoning administrator.

## **2. The planning commission**

Cities may choose to establish planning commissions to assist in zoning administration, but are not required to do so. (However, if a city has adopted a comprehensive plan, a planning commission is mandatory). Usually, it is a good idea to create a planning commission, because city council officials have multiple budgeting, legislative and administrative duties that they must perform in addition to their land use responsibilities. Planning commissions, on the other hand, are usually composed of people who focus solely on zoning and development and, thus, can devote their full attention.

Planning commissions are created by ordinance or charter and may vary in size. City council members may be appointed to serve as commission members. Once formed, planning commissions, with city council consent, may adopt bylaws or their own rules of procedure. The city may provide the planning commission with staff, including legal counsel, as necessary.

In many cities all zoning applications for conditional use permits, rezoning and variances are submitted to the planning commission for review. If a planning commission exists, state law requires that the planning commission must review zoning ordinance amendments and amendments to the official map. With limited exceptions, the planning commission's role in reviewing all types of zoning applications is generally advisory. The City Council usually gives the planning commission recommendations great weight in their considerations, but is not bound by them.

The planning commission may hold required public hearings on behalf of the city council, such as a hearing for a zoning ordinance amendment.

## **3. Planning departments**

Cities may also form a planning department. In cities that chose this option, the planning commission becomes advisory to the planning department while the planning department takes on the role of advising the city council.

**RELEVANT LINKS:**

Minn. Stat. § 462.3595.

Minn. Stat. § 462.354, subd.  
2. Minn. Stat. § 462.357,  
subd. 6.

Minn. Stat. § 462.354, subd.  
2.  
Minn. Stat. § 15.99.

#### **4. The city council**

In many cities the city council makes the final determination on all applications for rezoning, conditional use permits and interim use permits after consulting the zoning administrator, planning commission and City Attorney as needed. However, the Municipal Planning Act allows cities to delegate final decision making authority concerning conditional use permits to a “designated authority” (presumably the Planning Commission). The City Council cannot delegate its authority to grant rezoning applications and interim use permits.

#### **5. Board of zoning adjustment and appeals**

State law requires all cities that have adopted a zoning ordinance to create a Board of Appeals and Adjustments. The Board of Appeals and Adjustment must be created by ordinance. The council may designate itself as the Board of Appeals and Adjustments, or appoint a separate board or the planning commission to serve the city in this capacity. If the board is a separate body, the council can provide in its ordinance that board decisions are:

- final and subject only to judicial review;
- final subject to appeal to the council and judicial review; or
- only advisory to the council, who will make the final determination.

The board hears requests for variances from the zoning code and makes the determination to grant or deny the variance. In addition, the Board of Appeals and Adjustment hears requests for reconsideration of zoning applications (usually denials), where it is alleged there has been an error in the administration of the zoning ordinance.

The ordinance establishing the board must provide notice and time requirements for hearings before the board. All orders by the board are due within a reasonable time. Requests before the board are subject to the 60-day rule.

**RELEVANT LINKS:**

*State, by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978).

For more information on applications for re-zoning see Section V-C *Standards for reviewing zoning applications: limits on city discretion*. The varying discretion available to cities in making zoning decisions has been described as following a pyramid diagram.

*Northwestern College v. City of Arden Hills*, 281 N.W.2d 865 (Minn. 1979).

### **C. Standards for reviewing zoning applications: limits on city discretion**

When drafting and adopting a zoning ordinance, cities have enormous discretion in choosing their language and specifying uses as permitted, prohibited or conditional in particular districts. When drafting and adopting a zoning ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's zoning authority are that action must be constitutional, rational and in some way related to protecting the health, safety and welfare of the public. This is known as the "rational basis standard" and is generally a very friendly standard for cities to meet.

In contrast, when administering an existing zoning ordinance (for example when reviewing specific zoning applications for conditional use permits), the city's discretion is much more limited. Generally, when reviewing a zoning application (with the exception of rezoning applications), the city is no longer acting in its legislative capacity. When reviewing zoning applications, the city is said to be exercising a quasi-judicial function. Rather than legislating for the broad population as whole, the city is making a quasi-judicial (judge-like) determination about an individual zoning application regarding whether the application meets the standards of the city ordinance.

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an 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. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

A city is acting in a quasi-judicial manner when it reviews applications for:

- Conditional use permits.
- Interim use permits.
- Variances.

In quasi-judicial situations, a reviewing court will closely scrutinize the city's decision, to determine whether they city has provided a legally and factually sufficient basis for denial of an application.

## RELEVANT LINKS:

*State, by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978).

See Section V-C, *Standards for reviewing zoning applications: limits on city discretion*.

Minn. Stat. § 15.99, subd. 2(a).  
See Section V-A, *The 60-Day Rule*.

*SuperAmerica Group, Inc. v City of Little Canada*, 539 NW 2d 264 (Minn. Ct. App. 1995).  
*Swanson v City of Bloomington*, 421 NW 2d 307 (Minn. 1988).  
*Larson v Washington County*, 387 N.W.2d 902 (Minn. Ct. App 1986).  
See also LMC information memos, *Taking the Mystery Out of Findings of Fact*.

In quasi-judicial situations, due process and equal protection are the main reasons for the more stringent scrutiny. Due process and equal protection under the law demand that similar applicants must be treated uniformly by the city. The best process for insuring similar treatment among applicants is to establish standards in the ordinance and to provide that if standards are met, the zoning permit must be granted. An application may generally only be denied for failure to meet the standards in city ordinances.

A reviewing court will overrule a quasi-judicial city zoning decision if it determines that the decision was arbitrary (failed to treat equally situated applicants equally or failed to follow ordinance requirements).

### 1. Standard of review for re-zoning applications

An application for a rezoning is a request for an amendment to the zoning ordinance. When reviewing applications for re-zoning, the court has ruled that the city continues to act in a legislative capacity, even though the re-zoning application may only relate to one specific parcel owned by one individual.

The existing zoning ordinance is presumed to be constitutional, and an applicant is only entitled to a change if they can demonstrate that the existing zoning is unsupported by any rational basis related to the public health, safety and welfare.

### 2. Making a record of the basis for zoning decisions

The 60-Day Rule requires the city to provide reasons for its denial of a zoning request. These reasons for denial must be stated on the record. In addition, the city must provide the applicant with a written statement of the reasons for denial.

The reasons for denial or approval, whether written or stated on the record are considered the city's "findings of fact" on the application if later court review of the city's decision is necessary.

Findings of fact are also essential to the zoning process, because they enable a reviewing court to sustain a city's zoning decisions. When a land use decision is challenged in court, the standard of review used by the court is very limited. The city's decision will be upheld if the findings of fact demonstrate a rational and legally sufficient basis for the decision that is not arbitrary or capricious.

## RELEVANT LINKS:

*Zylka v. City of Crystal*, 167 N.W.2d 45, (Minn. 1969).

See Sections V-C-3-c, *conditional use permits* and V-C-3-d, *requests for variances from the zoning ordinance*, for more information on the standards of review for conditional use permits and variances.

*Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svej*, 226 N.W.2d 306 (Minn. 1975).

*Minnetonka Congregation of Jehovah's Witnesses, Inc. v. Svej*, 226 N.W.2d 306 (Minn. 1975).

Findings of fact should state all of the relevant facts the city considered in making its decision on the zoning application. A fact is relevant if it proves or disproves that the application meets the legal standards of the city ordinance and state law for granting the zoning request. For example, applications for conditional use permits and variances are all subject to particular standards that are or should have been spelled out in city ordinances, or have been defined by state law or court decision. In evaluating any particular zoning request, the reviewing body should apply the relevant facts to the particular standards that govern the specific type of decisions being made. The basis for reviewing specific types of zoning applications is discussed more extensively later in this memo.

### a. Neighborhood opposition

Certain zoning applications may generate vocal public opposition. Frequently, cities struggle with handling vocal neighborhood opposition in their findings of fact. However, general statements of public opposition should not be a finding of fact listed as a basis for denying a zoning application. Nor should the official record intimate that public opposition is the underlying basis for the city's findings of fact.

If a zoning application meets the requirements of the ordinance, it must be granted, despite the disapproval of the neighbors.

However, this does not mean that all statements of the public must be disregarded. A significant part of the zoning process is generally the public hearing mandated by the Municipal Planning Act. The Municipal Planning Act requires that all parties interested in an application, including the applicant and neighbors, be granted an opportunity to speak and present their views on the application. While general statements of opposition may not be used as a finding of fact, statements made by the public that are concrete and factual relating to the public welfare are acceptable findings.

For example, a finding of fact should not be "public opposition to the project is strong." But a finding of fact can be, "numerous statements were made at the public hearing by neighbors in the vicinity of the project that streets in the area are already highly congested. The addition of a shopping mall would significantly increase congestion on streets that are at capacity." Where possible, findings of fact that refer to statements by the public should be corroborated by studies and/or expert testimony or opinions.

### b. Conducting a public hearing

Public hearings are required prior to the city taking action on numerous types of zoning issues. A public hearing must be held for:

**RELEVANT LINKS:**

Minn. Stat. § 462.357, subd. 3.  
Minn. Stat. § 462.3595, subd. 2.  
Minn. Stat. § 462.357, subd. 3.

See Sample Public Hearing Notice.

For more information on conducting public hearings see LMC information memo, *Public Hearings*.

- Zoning ordinance adoption or amendment.
- Conditional use permits.
- Rezonings.

City ordinances may also require additional hearings for certain matters. Since variances are considered in the nature of a zoning amendment, some cities hold hearings for variance requests as well. As this is an unsettled area of law, please consult your city attorney on the practice of holding hearings for variances.

Notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing, and notice must be mailed to property owners within a 350-foot radius of the land in question (including landowners within the 350 foot radius who may live outside the city).

Public hearings should include a complete disclosure of what is being proposed, and a fair and open assessment of the issues raised. A public hearing must include an opportunity for the general public and interested parties to hear and see all information and to ask questions, provide additional information, express support or opposition, or suggest modifications to the proposal.

Public hearings should be conducted with a goal of developing findings of fact to support the city’s decision to grant or deny a zoning application. As a result, it may be helpful for the city to provide the public with guidelines for the procedure of the hearing and to encourage the public to present only factual evidence for public consideration.

**3. Review of specific types of zoning applications**

Cities who have adopted a zoning ordinance need procedures to help them review the different types of zoning applications they receive. Cities typically receive applications for conditional use permits, interim uses, variances and requests for rezonings.

As discussed above, all of these applications are subject to the 60-Day Rule. However, this is where the similarities among the review procedures for each type of application ends. Each type of application requires a different standard of review, because state law (and likely local ordinance as well) establishes specific requirements for granting each type of application.

## RELEVANT LINKS:

*Chase v. City of Minneapolis*, 401 N.W.2d 408 (Minn. 1981).  
*Rose Cliff Landscape Nursery v. City of Rosemount*, 467 N.W.2d 641 (Minn. Ct. App. 1991).

See Section III-A, *establishing permitted and conditional uses*.

See Section V-C, *standards of reviewing zoning applications: limits on city discretion*.  
Minn. Stat. § 462.357, subd. 6.  
*Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs*, 633 N.W.2d 59 (Minn. Ct. App. 2001).  
See Section V-C-3-d, *requests for variances from the zoning ordinance*.

### a. Permitted uses

Cities may vary in their administrative procedures for handling permitted uses. For example, some cities will have their building inspector confirm that a use is permitted and meets all applicable zoning rules at the time a building permit is issued with no other formal action from the city. Other cities, that may not enforce the State Building Code, may require all landowners seeking to develop or build to apply for a formal zoning permit. The permit is issued to confirm that that the use is permitted and/or meets all other applicable zoning standards.

Regardless of the administrative procedures used, it is important to remember that a city may not impose additional conditions on a permitted use that fits the standards of the city ordinance. Such actions are likely to be seen as arbitrary or denying the landowner equal protection and due process. Generally, a landowner is entitled to engage in the permitted use provided they have met all applicable requirements.

Cities should regularly review their permitted uses to be certain that the listed permitted uses fit current city needs and circumstances. Permitted uses that may have previously been standard (such as carriage houses in residential districts), may be inappropriate on a modern city, residential block. As time passes, permitted uses may need to be reclassified as prohibited uses or transformed into conditional uses, where conditions may be imposed to prevent any negative secondary effects.

### b. Prohibited uses

Cities may receive applications requesting permission to engage in uses explicitly prohibited under the city's zoning ordinance. For example, a request to engage in industrial activities in a commercial zone. When a use is prohibited, the city cannot allow the use unless an amendment to the city's zoning ordinance is adopted in accordance with the procedures of the Municipal Planning Act. Cities are prohibited from granting variances or conditional use permits to engage in prohibited uses.

## RELEVANT LINKS:

*Amoco Oil Co. v. City of Minneapolis*, 395 N.W.2d 115 (Minn. Ct. App., 1986).

*Zylka v. City of Crystal*, 167 N.W.2d 45 (Minn. 1969).

Minn. Stat. § 462.3595.

*Zylka v. City of Crystal*, 167 N.W.2d 45, (Minn. 1969).

Minn. Stat. § 462.3595.  
Minn. Stat. § 462.3595, subd. 2.

*Schwardt v. County of Watonwan*, 656 N.W.2d 383 (Minn. 2003).

*Yang v. County of Carver*, 660 N.W.2d 828 (Minn. Ct. App. 2003).

*Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13 (Minn. Ct. App. 2003).

*Trisko v. City of Waite Park*, 566 N.W.2d 349 (Minn. Ct. App. 1997).

*Hubbard Broadcasting, Inc. v. City of Afton*, 323 N.W.2d 757 (Minn. 1982).

See Section I-C *Role of comprehensive planning in zoning ordinance adoption. SuperAmerica Group, Inc. v. City of Little Canada*, 539 N.W.2d 264 (Minn. Ct. App. 1995).

*In re Livingood*, 594 N.W.2d 889 (Minn. 1999).

### c. Conditional use permits

The concept of a conditional use permit (CUP) was created to give cities more flexibility in zoning ordinance administration. Generally, conditional uses are uses that are often too problematic to be permitted uses as of right in a district. However, since the use is still generally favorable or necessary, outright prohibition of the use is generally not practical or desired. A classic example of such a mixed positive/negative use is a gas station in a residential area. Conditional uses seek to strike a middle ground between outright, unchecked permissive establishment and complete prohibition. Conditional uses are uses that will be allowed if certain conditions (that minimize the problematic features of the use) are met.

Cities must specify conditional uses in a city ordinance. Generally, a list of conditional uses will be found alongside the permitted uses in a city ordinance. The ordinance must also establish what conditions or standards must be met to allow the conditional use. Ordinances that fail to establish standards for granting the listed conditional uses are problematic and potentially invalid.

The city must grant the CUP if the applicant satisfies all the conditions established in the ordinance.

A city may deny a CUP if the proposed use:

- Does not meet the specific standards or conditions established in the zoning ordinance;
- Is not consistent with the city's officially adopted comprehensive plan;
- Endangers or is not compatible with the health, safety and welfare of the public.

When a local government denies a landowner a CUP without sufficient evidence to support its decision, a court can order the issuance of the permit subject to reasonable conditions.

## RELEVANT LINKS:

Minn. Stat. § 462.3595, subd. 4.

*Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686 (Minn. 1991).

*Snaza v. City of St Paul*, 548 F.3d 1178 (8th Cir. 2008).  
Minn. Stat. § 462.3597.  
A.G. Op. 59-A-32 (February 27, 1990).

*Upper Minnetonka Yacht Club v. City of Shorewood*, 770 NW 2d 184 (Minn. Ct. App. 2009).

See LMC information memo, *Land Use Variances*.

Minn. Stat. § 462.354, subd. 6.  
See Section V-B-5 *Boards of Adjustment and Appeals*.

Minn. Stat. § 462.357, subd. 6.  
See also LMC information memo, *Land Use Variances* for sample ordinance language.

*Krummenacher, v. City of Minnetonka*, 783 N.W.2d 721 (Minn. 2010).

Once a CUP is granted, a certified copy of the CUP (including a detailed list of all applicable conditions) must be recorded with the county recorder or the registrar of titles, and must include a legal description of the land.

CUPs are considered property interests that run with the land—that is, they pass from seller to buyer when the land is sold or transferred. For this reason, time restrictions on a CUP are potentially invalid. In one instance, however, the courts have supported the city’s decision to issue a time-limited CUP. If the city wishes to issue a time-limited CUP, the city attorney should be consulted.

Once issued, a CUP’s conditions cannot be unilaterally altered by the city, absent a violation of the CUP itself.

### d. Requests for variances from the zoning ordinance

Variances are an exception to rules laid out in a zoning ordinance. They are permitted departures from strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner “practical difficulties.” Variances are generally related to physical standards (such as setbacks or height limits) and may not be used to allow a use that is prohibited in the particular zoning district. Essentially, variances allow the landowner to deviate from the rules that would otherwise apply.

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board’s decision is subject to appeal to the city council. Under the statutory practical difficulties standard, a landowner is entitled to a variance if the facts satisfy the three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

Note! “Undue hardship” was the name of the three-factor test prior to a May 2011 change of law. Effective May 6, 2011 Minnesota Laws, Chapter 19, amended Minn. Stat. § 462.357, subd. 6 to restore municipal variance authority in response to the *Krummenacher v. City of Minnetonka*, case.

In *Krummenacher*, the Minnesota Supreme Court interpreted the statutory definition of “undue hardship” and held that the “reasonable use” prong of the “undue hardship” test was not whether the proposed use is reasonable, but rather whether there is a reasonable use in the absence of the variance.

## RELEVANT LINKS:

See LMC information memo,  
*Land Use Variances*.

*Krummenacher, v. City of  
Minnetonka*, 783 N.W.2d  
721 (Minn. 2010).  
*Rowell v. Board of  
Adjustment of the City of  
Moorhead*, 446 N.W.2d 917  
(Minn.App.1989).

*Myron v. City of Plymouth*,  
562 N.W.2d 21 (Minn. Ct.  
App. Apr. 15, 1997 aff'd,  
581 N.W.2d 815 (Minn.  
1998) overruled on other  
grounds by *Wensmann  
Realty, Inc. v. City of Eagan*,  
734 N.W.2d 623 (Minn.  
2007).

*City of Maplewood v.  
Valiukas*, CO-96-1468  
(Minn. Ct. App. Feb 11,  
1997) (unpublished opinion).

The 2011 law changed the first factor back to the “reasonable manner” understanding that had been used by some lower courts prior to the *Krummenacher* ruling. The 2011 law renamed the municipal variance standard from “undue hardship” to “practical difficulties,” but otherwise retained the familiar three-factor test of (1) reasonableness, (2) uniqueness, and (3) essential character.

The 2011 law also provides that: “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.”

The practical difficulties factors are:

- 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.
- The landowner’s situation 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 and economic considerations alone cannot create practical difficulties.
- The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

Variances are to be granted only if strict enforcement of a zoning ordinance causes practical difficulties. A landowner who purchased land knowing a variance would be necessary in order to make the property buildable is not barred from requesting a variance on the grounds the hardship was self-imposed.

In granting a variance, the city may attach conditions, but the conditions must be directly related and bear a rough proportionality to the impact created by the variance. For example, if the variance reduces side yard setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

## RELEVANT LINKS:

*Mohler v. City of St. Louis Park*, 643 N.W.2d 623 (Minn. Ct. App. 2002).  
*Nolan v. City of Eden Prairie*, 610 N.W.2d 697 (Minn. Ct. App. 2000).  
*Graham v. Itasca County Planning Comm'n*, 601 N.W.2d 461 (Minn. Ct. App. 1999).

*Stotts v. Wright County*, 478 N.W.2d 802 (Minn. Ct. App. 1992).

*City of North Oaks v. Sarpal*, 797 N.W.2d 18 (Minn. 2011).

*Mohler v. City of St. Louis Park*, 643 N.W.2d 623 (Minn. Ct. App. 2002).

Minn. Stat. § 462.357, subd. 6.

*Kismet Investors v. County of Benton*, 617 N.W.2d 85 (Minn. 2000).

*Kismet Investors v. County of Benton*, 617 N.W.2d 85 (Minn. 2000).

Minn. Stat. § 462.357, subd. 6(2).

Broad discretion is permitted when denying a request for a variance, but there must be legally sufficient reasons for the denial. The board must make findings concerning the reasons for the denial or approval and the facts upon which the decision was based. The findings must adequately address the statutory requirements. Best practice suggests seeking specific legal advice from the city attorney before making decisions on requests for variances.

An applicant for a variance is not entitled to a variance merely because similar variances were granted in the past, although in granting variances, the city ought to be cautious about establishing precedent.

Error by city staff in approving plans does not entitle a person to a variance. While the result might be harsh, a municipality cannot be estopped from correctly enforcing a zoning ordinance even if the property owner relies to his or her detriment on prior city action.

As discussed above, the most common requests for variances relate to physical conditions on the property. For example, setbacks and height restrictions. On occasion a city may receive requests for variances related to uses. For example, a request to use the property for a landscaping business out of a home in a residential district. This is commonly known as a use variance.

A use variance may not be granted if the use is prohibited in a zoning district. This may occur when the local zoning ordinance specifically lists prohibited uses (such as industrial uses in a residential zone) or when a zoning ordinance lists permitted uses and states that all uses not specifically listed are considered prohibited.

A city may grant a use variance when a use is not prohibited in the zoning district. For example, the zoning ordinance is silent on the issue or when the use is explicitly allowed, but limited by another portion of the city ordinance. For example, when a permitted use cannot meet performance standards elsewhere in the ordinance (such as parking or screening). The requirements of unusual hardship and other statutory requirements still apply to use variances.

Finally, state statute creates two use variances that a city may always choose (but is not required) to permit through a variance. State statute specifically empowers cities to grant use variances for solar energy systems where a variance is needed to overcome inadequate access to direct sunlight and for the temporary use of a single family residence as a two-family residence.

**RELEVANT LINKS:**

Minn. Stat. § 462.357.  
Minn. Stat. § 462.358, subd.  
2a.  
Minn. Stat. § 15.99.

Minn. Stat. § 462.357, subd.  
4.  
See Part V-A, *The 60-day  
rule*.

*Sun Oil Co. v. Village of New  
Hope*, Minn. N.W.2d 256  
(Minn. 1974).

Minn. Stat. § 462.357, subd.  
2.

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

*Amcon Corp. v. City of  
Eagan*, 348 N.W.2d 66  
(Minn.1984).  
*Olsen v. City of Hopkins*, 178  
N.W.2d 719 (Minn. 1970).  
*Three Putt, LLC v. City of  
Minnetonka*, No. A08-1436  
(Minn. Ct. App 2009)  
(unpublished decision).

**e. Requests for rezoning or zoning ordinance amendments**

Cities have the authority to rezone (change a designation from residential to mixed commercial) or otherwise amend the zoning regulations governing a particular parcel of property (such as adding a permitted or conditional use). Note however, that rezoning is an amendment to the actual zoning ordinance and therefore all the procedures for amendments to the zoning ordinance apply.

Rezoning may be initiated by the planning commission, council, or a petition by an individual landowner. If a request for rezoning does not come from the planning commission, the matter must be referred to the planning commission for study and report.

Care should be taken so that the 60-Day Rule discussed previously is not violated, resulting in an automatic granting of the rezoning.

Rezoning is a legislative act and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare. A rezoning decision must be supported by findings of fact that indicate the city's rational basis for the rezone. If the city has followed a comprehensive planning process, the findings of fact should also indicate that the decision is consistent with the city's comprehensive plan.

**(1) Rezoning residential property**

When property is rezoned from residential to commercial or industrial, a two-thirds majority of all members of the city council is required. (This means there must be four affirmative votes on a five-member council, in most cases.) For other rezoning decisions, a simple majority vote of all members is all that is required.

The Minnesota attorney general has issued an opinion that charter cities may not alter this voting requirement in their charter. The purpose of state law is to provide a uniform set of procedures for city planning and such procedures apply to all cities, charter or statutory.

**(2) Spot zoning**

The general rule is that property owners do not acquire any vested rights in the specific zoning of their parcel. Cities may exercise their legislative discretion to rezone property in furtherance of the public, health, safety and welfare. Cities should, however, avoid a type of rezoning known as "spot zoning."

## RELEVANT LINKS:

*State, by Rochester Ass'n of Neighborhoods v. City of Rochester*, 268 N.W.2d 885 (Minn. 1978).

*Alexander v. City of Minneapolis*, 125 N.W.2d 583 (Minn. 1963).

See Handbook, *Environmental Regulations* for more information on environmental review.  
Minn. Stat. § 116D.  
Minn. R. ch. 4410.  
Minn. Stat. § 16D.02.

Minn. Stat. § 15.99, subd. 3(d), (e).  
Minn. Stat. § 116D.  
Minn. R. ch. 4410.  
See Section V-A *The 60-Day Rule*.

Minn. Stat. § 462.353, subd. 4(a).  
Minn. Stat. § 462.353, subd. 4(b).

Spot zoning usually involves the rezoning of a small parcel of land in a manner that:

- Is unsupported by any rational basis relating to promoting public welfare.
- Establishes a use classification inconsistent with surrounding uses and creates an island of nonconforming use within a larger zoned district (for example one lot where industrial uses are permitted in an otherwise residential zone).
- Dramatically reduces the value for uses specified in the zoning ordinance of either the rezoned plot or abutting property.

Spot zoning that results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation.

In these rare instances, a property owner may be entitled to compensation for damages related to a legislative rezoning.

## D. Environmental review

Minnesota has adopted a comprehensive and detailed environmental review program to determine the significant environmental effects of private and governmental actions. The idea behind the program is that if governmental bodies require documents that identify the environmental consequences of a proposed development and those documents are available to the public, decision-makers can incorporate environmental protection into the proposed development. The law prohibits the issuance of permits or development prior to completion of necessary documents.

The state-mandated environmental review process usually occurs in conjunction with the city's administration of its zoning ordinance. The environmental review process may require the city to delay consideration of an application. The 60-Day Rule allows an extension for these purposes.

## E. Fees and escrow

Proper zoning administration may require significant financial commitment from a city. However, a city may establish land use fees under the Municipal Planning Act sufficient to defray the costs incurred by the city in reviewing, investigating, and administering an application for an amendment to an official control, or an application for a permit or other approval required under the zoning ordinance.

## RELEVANT LINKS:

Minn. Stat. § 462.353, subd. 4(d).  
Minn. Stat. § 462.361. Minn. Stat. § 462.361.

Minn. Stat. § 462.353, subd. 4(a).

Minn. Stat. § 462.353, subd. 4(c).

Minn. Stat. § 326B.145.

Fees are required by law to be fair, reasonable, proportionate, and be linked to the actual cost of the service for which the fee is imposed. All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected. Upon request, a city must explain the basis of its fees.

If a dispute arises over a specific fee imposed by a city related to a specific application, the person aggrieved by the fee may appeal to district court provided the appeal is brought within 60 days after approval of the application and deposit of the fee into escrow. An approved application may proceed as if the fee had been paid, pending a decision on the appeal.

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. The exception authorizes cities that collect an annual cumulative total of \$5,000 or less of land use fees to simply refer to a fee schedule in the ordinance that governs the official control or permit. These cities are authorized to adopt a fee schedule by ordinance or by resolution, either annually or more frequently, after providing notice and holding a public hearing.

Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total in excess of \$5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

January 1 is set by statute as the standard effective date for changes to fee ordinances, but a city may set a different effective date as long as the new fee ordinance does not apply to a project for which application for final approval was submitted before the ordinance was adopted.

Cities that collect over \$10,000 in fees annually must report annually to the Department of Labor and Industry all construction and development-related fees collected or face penalties. The report must include information on the number and valuation of the units for which fees were paid, the amount of building permit fees, plan review fees, administrative fees, engineering fees, infrastructure fees, other construction and development related fees, and the expenses associated with the municipal activities for which the fees were collected.

## F. Updating and maintaining the city's zoning ordinance

Another important topic to discuss in zoning administration is on-going maintenance of the zoning ordinance itself, both its actual text and maps. City zoning authority is created and regulated by statutes and court decisions.

## RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 4.  
*Pawn America Minnesota, LLC v. City of St Louis Park*, 787 N.W.2d 565 (Minn. 2010).

Minn. Stat. § 462.355, subd. 4(a).

Both are changed or are amended frequently, making it imperative that cities remain abreast of current developments in the law and, with the assistance of legal counsel, amend their zoning ordinances accordingly.

Any city that has adopted a zoning ordinance should regularly review it to make sure it is consistent with current law. In addition, cities should also review their ordinances to make sure they are consistent with past staff and council interpretation and to make sure they are consistent with the city's comprehensive plan.

Finally, the zoning ordinance should be reviewed to ensure that it is consistent with the city council's current goals and visions for the community. Changes in the city's economic situation, population changes and surges in development interest may quickly make a zoning ordinance outdated with current city realities. Regulations that are inconsistent with what the staff and council see as the future of the community can only cause conflicts when particular applications have to be evaluated.

### 1. Interim Ordinances (Moratoria)

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in the zoning ordinance amendment process, by allowing a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed on a particular issue. Cities must follow the procedures established in state statute to initiate a moratorium.

#### a. Procedure for interim ordinance adoption

Cities must initiate a moratorium by adopting an ordinance (interim ordinance). The interim ordinance may regulate, restrict, or prohibit any use, development, or subdivision within the city or a portion of the city for a period not to exceed one year from the effective date of the ordinance. An interim ordinance may only be adopted where the city:

- Is conducting studies on the issue.
- Has authorized a study to be conducted.
- Has held or scheduled a hearing for the purpose of considering adoption or amendment of a comprehensive plan or other official controls, including the zoning code, subdivision controls, site plan regulations, sanitary codes, building codes and official maps.
- Has annexed new territory into the city for which plans or controls have not been adopted.

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted.

**RELEVANT LINKS:**

Minn. Stat. § 462.355, subd. 4(b).  
*Duncanson v. Board of Supervisors of Danville Tp.*, 551 N.W.2d 248 (Minn. Ct. App. 1996).

Minn. Stat. § 462.355, subd. 4(c).

Minn. Stat. § 462.355, subd. 4(c)(3).

Minn. Stat. § 462.355, subd. 4(c) (1).

Minn. Stat. § 462.355, subd. 4(c) (2).

Minn. Stat. § 462.355, subd. 4(c).

Minn. Stat. § 462.355, subd. 4(c).  
*Semler Const., Inc. v. City of Hanover*, 667 N.W.2d 457 (Minn. App. 2003).

*Woodbury Place Partners v. Woodbury*, 492 N.W.2d 258 (Minn. Ct. App. 1993).  
*Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 122 S. Ct. 1465 (2002).

No notice or hearing is generally necessary before an interim ordinance is enacted. However, a public hearing must be held if the proposed interim ordinance regulates, restricts or prohibits livestock production (feedlots). In such case, the notice of the hearing must be published at least ten days prior to the hearing in a newspaper of general circulation in the city.

**b. Procedure for interim ordinance extension**

An interim ordinance may be extended only in limited circumstances if the procedures of state statute are followed. An interim ordinance may be extended if the city holds a public hearing and adopts findings of fact stating that additional time is needed to:

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.
- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city’s official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Complete “any other process” required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.
- Review an area that is affected by a city’s master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published at least ten days before the hearing.

**c. Applicability**

An interim ordinance or moratorium may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary taking in the nature of a regulatory taking, courts will look to the parcel as whole.

**RELEVANT LINKS:**

A.G. Op. 477b-34 (July 29, 1991).

Minn. Stat. § 462.357, subd. 1c.

*Jake's, Ltd., Inc. v. City of Coates*, 284 F.3d 884 (8th Cir. 2002).

Minn. Stat. § 462.357, subd. 1d.

*SLS P'ship v. City of Apple Valley*, 511 N.W.2d 738 (Minn. 1994).  
*Halla Nursery v. Chanhassen*, 763 NW 2d 42 (Minn. St. App. 2009).

Minn. Stat. § 462.357, subd. 1e.

There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

## **VI. Zoning ordinance enforcement**

The Municipal Planning Act authorizes cities to enforce their zoning ordinance through criminal penalties. In addition, civil remedies, such as an injunction, are available to cities to cure on-going violations. The Minnesota Attorney General has ruled that it is a general duty of a city to enforce its zoning ordinance and that a city cannot refuse to enforce zoning requirements by ignoring illegal land uses. In enforcing city ordinances, however, a city must be aware that certain landowners may have specific rights as existing non-conformities; if their non-conforming use pre-dated the city's zoning regulation.

### **A. Legal nonconformities predating the adoption of the zoning ordinance**

#### **1. Legal nonconformities**

Legal nonconformities are legal uses, structures, or lots that predate current zoning regulations and thus do not comply with the current zoning ordinance. In most cases, nonconformities cannot be amortized or phased out. A municipality must not enact, amend or enforce an ordinance that eliminates a use which use was lawful at the time of its inception. Similar protections do not exist for nonconformities that were not lawful, or prohibited by state law or city ordinance, at the time of their inception. This prohibition also does not apply to adults-only bookstores, adults-only theaters or similar adults-only businesses, as defined by ordinance. Nor does it prohibit a municipality from enforcing an ordinance providing for the prevention or abatement of nuisances, or eliminating a use determined to be a public nuisance.

Legal nonconformities are those uses, structures or lots that legally existed prior to the creation of the zoning district and, in recognition of the landowner's property rights, are allowed to continue even though they are now illegal. Besides being allowed to remain in effect, legal nonconformities also escape requirements subsequently enacted, such as setback requirements. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

While legal nonconformities must be allowed to continue, a zoning ordinance may prohibit them from being expanded, extended or rebuilt in certain situations.

**RELEVANT LINKS:**

*Ortell v. City of Nowthen*,  
814 N.W.2d 40 (Minn. App.  
2012).

Minn. Stat. § 462.357, subd.  
1e (c).

Minn. Stat. § 462.357, subd.  
1f.

Minn. Stat. § 462.357 subd.  
1e(2).

However, nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, unless:

- The nonconformity or occupancy is not used for a period of more than one year.
- Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, and no building permit has been applied for within 180 days of when the property is damaged. In this case a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property or bodies of water.

Cities can also regulate nonconforming uses and structures to maintain eligibility in the National Flood Insurance Program. State law specifically authorizes city regulation of nonconforming uses to mitigate potential flood damage or flood flow.

Any subsequent use or occupancy of the land or premises shall be a conforming use or occupancy.

## **2. Shoreland legal nonconformities**

### **a. All shoreland lots**

When a nonconforming structure in a shoreland district, as defined by local ordinance, with less than 50 percent of the required setback from the water, is destroyed by fire or other peril to greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, the structure setback may be increased by the city if practicable and reasonable conditions may be placed upon a zoning or building permit to mitigate created impacts on the adjacent property or water body.

In addition, nonconforming shoreland lots of record in the office of the county recorder, on the date of adoption of local shoreland controls that do not meet the requirements for lot size or lot width have additional state law protections.

The city may (but is not required to) allow this type of lot to be used as a building site if:

**RELEVANT LINKS:**

Minn. R. ch. 7080.

- All structure and septic system setback distance requirements can be met.
- A Type 1 sewage treatment system, consistent with Minn. R. ch. 7080, can be installed or the lot is connected to a public sewer.
- The impervious surface coverage does not exceed 25 percent of the lot.

In evaluating all variances, zoning and building permit applications, or conditional use requests related to nonconforming shoreland lots, the city must require the property owner to address, when appropriate:

- Stormwater runoff management.
- Reducing impervious surfaces.
- Increasing setbacks.
- Restoration of wetlands.
- Vegetative buffers.
- Sewage treatment and water supply capabilities.
- Other conservation-designed actions.

A portion of a conforming shoreland lot may be separated from an existing parcel as long as the remainder of the existing parcel meets the lot size and sewage treatment requirements of the zoning district for a new lot and the newly created parcel is combined with an adjacent parcel.

**b. Contiguous lots without habitable residential dwellings**

In a group of two or more contiguous shoreland lots of record under a common ownership, the city must allow an individual lot to be considered as a separate parcel of land for the purpose of sale or development, if it meets the following requirements:

Minn. R. ch. 6120.

Minn. R. ch. 7080.

- The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minn. R. ch. 6120.
- The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minn. R. ch. 7080, and local government controls.
- The lot's impervious surface coverage does not exceed 25 percent of each lot.
- The development of the lot is consistent with the city-adopted comprehensive plan (if any).

**RELEVANT LINKS:**

Minn. Stat. § 115.55. Minn. R. ch. 7080.

Minn. Stat. § 462.362.  
Minn. Stat. § 169.89, subd. 2.  
Minn. Stat. §§ 609.02, subds. 3, 4a.  
Minn. Stat. § 609.0332.  
Minn. Stat. § 609.034.  
See Handbook, *Meetings, Motions, Resolutions, and Ordinances* for information on prosecution responsibilities for violations of local ordinances.

Minn. Stat. § 462.362.

*City of Minneapolis v. F and R, Inc.* 300 N.W.2d 2 (Minn. 1980). *Rockville Tp. v. Lang*, 387 N.W.2d 200 (Minn. Ct. App. 1986).

*Hall Nursery v. Chanhassen*, 763 NW 2d 42 (Minn. Ct. App. 2009).

Minn. Stat. §462.3595, subd. 3.

**c. Contiguous lots with habitable residential dwellings**

Two or more contiguous nonconforming shoreland lots of record in shoreland areas under a common ownership must be able to be sold or purchased individually if each lot contained a habitable residential dwelling at the time the lots came under common ownership and the lots are suitable for, or served by, a sewage treatment system consistent with the requirements of section 115.55 and Minn. R. ch. 7080, or are connected to a public sewer.

**B. Violations of the zoning ordinance: criminal penalties**

Cities may provide for criminal penalties for violation of the city zoning ordinance. In an ordinance, cities may designate ordinance violations as misdemeanors or petty misdemeanors. Cities may impose maximum penalties for misdemeanors of a \$1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of \$300.

**C. Violations of the zoning ordinance: civil remedies**

In many instances, criminal sanctions will not cure a zoning violation. Where the city desires removal of a building or use that violates the zoning ordinance, civil remedies may be more effective than even repeated criminal fines. A city may enforce its zoning ordinance through requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court. These remedies can be used to compel owners to cease and desist illegal uses of their property or even to tear down structures that have been built in violation of the city's zoning ordinance

**D. Violations of the zoning ordinance: conditional use permit revocation**

Where a conditional use permit has been issued, a city may have an additional method of compelling compliance with city zoning ordinances. Conditional use permits may be revoked if the permit holder violates the conditions of the permit. For example, if the permit requires installation of traffic calming measures, but the permit holder fails to do so.

**RELEVANT LINKS:**

*Northpointe Plaza v. City of Rochester*, 465 N.W.2d 686 (Minn. 1991).

Minn. Stat. § 462.358.

See LMC information memo, *Subdivision Guide for Cities*.

See Handbook, *Comprehensive Planning, Land Use, and City-Owned Land* for more information on city subdivision ordinances.

Minn. Stat. § 462.358, subd. 2b.  
Minn. Stat. § 462.353, subd. 4.

Minn. Stat. § 462.353, subd. 4.

However, it is important to emphasize that conditional use permits, once granted, are a property right. A city seeking to revoke a conditional use permit should provide the permit holder with due process, an opportunity to be heard and respond to allegations, prior to permit revocation. Procedures for revocation should be established in the zoning ordinance.

**VII. Conclusion: other land use controls available to cities**

It is important to emphasize that zoning is merely one of the tools available to a city to assist in creating a well-planned, even thriving community. A city may also use its subdivision ordinance, building and housing codes, nuisance ordinance, capital improvement programs and official map in conjunction with its zoning ordinance to achieve its planning goals and assure the social, economic and cultural future of the community.

**A. Subdivision ordinances**

Municipalities have the authority to regulate subdivisions of land for many reasons including but not limited to encouraging orderly development and planning for necessities such as streets, parks and open spaces.

Cities have the authority to adopt a subdivision ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Cities have the authority to require, as part of the subdivision regulations, that a reasonable portion of buildable land in any proposed subdivision be dedicated to the public or preserved for public use as some or all of the following:

- Streets, roads.
- Sewers.
- Electric, gas, and water facilities.
- Stormwater drainage and holding areas or ponds and similar utilities and improvements.
- Parks, recreational facilities, playgrounds, trails.
- Wetlands.
- Open space.

In the alternative, city ordinance may require money instead of land; state law refers to this as “cash fees.”

## RELEVANT LINKS:

See LMC information memo,  
*Subdivision Guide for Cities*.

Minn. Stat. § 505.01, subd.  
3(f).

Minn. Stat. § 462.358, subd.  
3a.  
Minn. Stat. ch. 505.

Minn. Stat. § 462.359.  
Minn. Stat. § 462.357, subd.  
1.  
For more information on the  
official map see Handbook,  
*Comprehensive Planning,  
Land Use, and City-Owned  
Land*.

Subdivision regulations may be as extensive as city zoning regulations. Subdivision regulations, in addition to the dedication requirements discussed above, may address:

- The size, location, grading and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs, gutters, water supply, storm and drainage, lighting, sewers, electricity, gas and other utilities.
- The planning and design of sites.
- Access to solar energy.
- The protection and conservation of floodplains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.
- Consistency of the subdivision with the official map (if one exists) and other local controls such as zoning and the comprehensive plan (if one exists).

Finally, subdivision regulations may require the installation of sewers, streets, electric, gas, drainage, water facilities and similar utilities and improvements.

### 1. Platting requirements

All platting is governed by the state Platting Act at Minn. Stat. ch. 505. A plat is a scale drawing of one or more existing parcels of land that depicts the location and boundaries of lots, blocks, outlots, parks, and public ways and other data required by the Platting Act.

City subdivision regulations may require plats where any subdivision creates parcels, tracts, or lots. Cities must require plats if any subdivision creates five or more lots or parcels which are 2-1/2 acres or less in size. City subdivision regulations must not conflict with state platting laws but may address the same or additional subjects.

### B. The official map

Cities have authority to adopt an official map. As a planning tool, official maps ensure that land the city needs for street widening, street extensions, future streets, local airports and other public purposes will be available at basic land prices by reserving these areas on a map. The official map is not the map adopted with the city's comprehensive plan or zoning code.

**RELEVANT LINKS:**

Minn. Stat. § 462.359, subd. 3.

Official maps do not give a city any right to acquire the areas reserved on the map without payment. When the city is ready to proceed with the opening of a mapped street, the widening and extension of existing mapped streets, or acquisition 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.

**C. Safety and maintenance codes**

In conjunction with the zoning requirements, cities may promote the city’s development by enforcement of the State Building Code and local nuisance and/or property maintenance ordinances. All three types of regulation ensure that the structures allowed within zoning districts are well-maintained and safe for the public, by preventing and combating blight.

**1. The State Building Code**

The State Building Code is a series of standards and specifications related to the type of building materials, spacing and other dimensions of building materials and structures designed to establish minimum safeguards in the construction of buildings, to protect the general public and people who live and work in them from fire and other hazards.

The State Building Code is the standard that applies statewide for the construction, reconstruction, alteration, and repair of buildings and other structures of the type governed by the code. The State Building Code supersedes the building code of any municipality.

If, as of Jan. 1, 2008, a municipality has in effect an ordinance adopting the State Building Code, the municipality must continue to administer and enforce the State Building Code within its jurisdiction. The municipality is prohibited by state statute from repealing its ordinance adopting the State Building Code. However, this provision does not apply to cities that have a population of less than 2,500, according to the last federal census, and that are located outside of a metropolitan county. These cities may repeal an ordinance adopting the State Building Code and they are not required to administer and enforce the code (although the State Building Code will remain in effect). These cities may, however, opt to enforce and administer the State Building Code by adopting a local ordinance.

State Building Code.  
For more information on the State Building Code see Handbook, *Public Safety and Emergency Management*.

Minn. Stat. § 326B.121.

Minn. Stat. § 326B.121.

Minn. Stat. § 326B.121.

**RELEVANT LINKS:**

Minn. Stat. § 326B.121.

Minn. Stat. § 326B.16.  
Minn. Stat. § 326B.112.  
Minn. Stat. § 326B.175.

Minn. Stat. § 412.221, subd. 23.  
Minn. Stat. § 561.01.

See LMC information memo, *Public Nuisances*.

*Wessman v. Mankato*, No. A08-0273 (Minn. Ct. App. 2008)(unpublished decision).

Minn. Stat. § 463.15.  
See LMC information memo, *Dangerous Properties*.

A city must not, by ordinance or through a development agreement, require building code provisions regulating components or systems of any structure that are different from any provision of the State Building Code. However, a city may, with the approval of the state building official, adopt an ordinance that is more restrictive than the State Building Code where geological conditions warrant a more restrictive ordinance.

Requirements regarding accessibility, elevator safety, and bleacher safety apply statewide, with no exception.

**2. Nuisance ordinances**

With or without zoning, cities may prevent and abate nuisances through the passage of a local ordinance that defines nuisances and provides for their regulation, prevention and/or abatement. Generally a “nuisance” is anything that is injurious to health, indecent or offensive to the senses, or an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property.

**3. Property maintenance ordinances**

Cities may choose to deal with the specific nuisance posed by dilapidated buildings through the adoption of a property maintenance ordinance. Such ordinances typically establish standards for exterior maintenance related to painting, siding, roofing and broken windows. City property maintenance ordinances should be drafted and enforced in a manner that is consistent with the State Building Code. Property maintenance ordinances should generally not attempt to regulate construction issues already regulated by the State Building Code, because such regulation may be pre-empted.

**4. Hazardous and Substandard Buildings Act**

Cities that have not adopted a local ordinance regarding nuisances or property maintenance may still abate the public safety threat posed by dangerous dilapidated buildings through the Hazardous and Substandard Building Act in state statute. The Hazardous Buildings Act allows cities to order landowners to abate (through repair or razing) hazardous conditions on their property or to abate hazardous conditions itself and then seek compensation for the property owner.

**RELEVANT LINKS:**

For more information on city acquisition of property see the LMC information memo, *Purchase and Sale of Real Property*.  
Minn. Stat. § 282. 01.  
*City of St Paul v State*, 754 NW 2d 386, (Minn. Ct. App. 2008).

## **D. City land acquisition**

Cities may also control development through the planned acquisition, development and potentially the resale of land by the city itself. Through purchase and acquisition programs, cities can acquire the land they need for present and future public purposes such as parks, streets, public buildings, such as police and fire halls, and to reserve land for future residential and commercial development. Cities may also acquire land through the tax forfeiture process.

**RELEVANT LINKS:**

Minn. Stat. § 429.041, subd. 2.

Minn. Stat. § 429.041, subd. 3.  
See Form 28.

Minn. Stat. § 429.061, subd. 1.  
See Section I-B: *The special benefit test.*  
See Form 12 and 13.

See Form 14.

Minn. Stat. § 429.061, subd. 1.  
See Form 15 (modify slightly, see FN 2.

The council may have the work performed by day labor supervised by the city engineer or other qualified person. However, council must have the work supervised by a registered engineer if done by day labor and it appears to the council that the entire cost of all work and materials for the improvement will be more than \$25,000

When the council orders construction work done by day labor it must require a detailed report indicating that the work was done according to the plans and specifications, or, if there were any deviations from them, an itemized statement of those deviations. This report must be certified by the registered city engineer (or other person in charge if there is no registered engineer). The report must also show:

- the complete cost of the construction.
- final quantities of the various units of work done.
- materials furnished for the project and the cost of each item thereof.
- cost of labor, cost of equipment hired, and supervisory costs.

## H. Prepare the proposed assessment rolls

The city clerk, with the assistance of the engineer or other qualified person selected by the council, prepares the proposed assessment rolls. (Cities should seriously consider retaining the services of a qualified and licensed appraiser to help assure that the amount of the special assessment does not exceed the increase in market value accruing to the property as a result of the public improvement project).

## I. Prepare for the assessment hearing

The purpose of the second hearing, commonly known as the assessment hearing, is to give property owners an opportunity to express concerns about the actual special assessment. Best practice suggests cities pass a resolution setting the date and time of the assessment hearing and directing that the city clerk publish and mail notice about the assessment hearing. This resolution need not be published.

### 1. Publish notice of the assessment hearing

At least once and at least two weeks before the assessment hearing, the city must publish notice of the hearing in the city newspaper or, if no city newspaper exists, in a county seat newspaper. The published notice must include the hearing time, date, place, overall project description, area to be assessed, total cost of the improvement, a description of a landowner's right to appeal the assessment, and any deferment options, if available.

## RELEVANT LINKS:

Minn. Stat. § 429.061, subd. 1.  
*Klapmier v. Town of Center*,  
346 N.W.2d 133 (Minn.  
1984).  
See Form 15.

Minn. Stat. § 429.061, subd. 1.  
See Form 15A.

Minn. Stat. § 429.061, subd. 2.

Minn. Stat. § 429.061, subd. 2.  
See Form 16.  
*Metropolitan Airports  
Com'n's v. Bearman*, 716  
N.W.2d 403 (Minn. Ct. App.  
2006).

Minn. Stat. § 272.32.  
Minn. Stat. § 272.37.

Minn. Stat. § 429.061, subd. 2.  
Minn. Stat. § 475.55, subd. 3.

## 2. Mail notice of the assessment hearing

At least two weeks before the hearing the city must also mail notice of the hearing to each affected property owner. This mailed notice must include the amount of the special assessment against the individual parcels, a description of the landowner's right to appeal the assessment, possible prepayment provisions, and the interest rate on the assessments. (Note: Certain properties (e.g., railroads) may not be reflected on the county's records because these property owners pay no state property tax. To provide notice, cities may need to search other records for such owners). For the assessment hearing, failure to comply with the requirements for published and mailed notice invalidates the assessments.

Because specific mailed notice of the assessment is important at this stage of the process, best practice suggests the clerk execute an affidavit attesting to the mailing to property owners.

## J. Assessment hearing

The assessment hearing may be adjourned and continued to another time. If the assessment hearing is adjourned provide proper notice by stating on the record, the date, time and place of the continuation of the hearing.

### 1. Resolution adopting assessment roll

At the assessment hearing the council shall hear and consider all objections to the proposed assessment, whether presented orally or in writing. The council has some flexibility before it adopts the assessment roll and may change, or amend, the proposed assessment as to any parcel. Council must, by resolution, adopt the same as the special assessment against the lands named in the assessment roll. Once the assessment roll is adopted the assessments are set and become liens against the properties listed. The council must prepare a record of the proceedings and written findings as to the amount of the assessment roll at this hearing.

### 2. Council decides interest on special assessments

Special assessments may bear interest at any rate the council determines, (unless a charter sets limits on interest rates for assessments). In setting the rate, the council should make sure there is a reasonable relationship between the assessment interest rate and the bond interest rate if the city issued bonds to finance the project. If the city finances the project with funds on hand without using bonds, the council will want to look at the interest rate the city would otherwise have earned on the funds.

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: April 3, 2017

To: Chair Ronningen and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: March 29, 2017  
Re: 2017 Meeting Schedule – Reschedule July 3 Planning Commission Meeting

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At its November 7, 2016 meeting, staff asked the Planning Commission to reschedule its January 2 and September 4, 2017 meetings because they fell on holidays. At that time, staff should have also asked the Planning Commission to consider rescheduling its July 3 meeting, because it falls between a weekend and the 4<sup>th</sup> of July. Many people will be making July 3 a part of a 4-day 4<sup>th</sup> of July holiday weekend. This may also be the case for Planning Commission members and for applicants who may be planning to bring an application to the July Planning Commission meeting. For this reason, it is staff's recommendation that the July 3 Planning Commission meeting be rescheduled to Monday, July 10.

**PLANNING COMMISSION DIRECTION REQUESTED:**

**Motion regarding a recommendation concerning rescheduling the July 3, 2017 Planning Commission meeting to July 10, 2017.**

**City of Afton**  
**3033 St. Croix Trl, P.O. Box 219**  
**Afton, MN 55001**

# Planning Commission Memo

## Meeting: April 3, 2017

To: Chair Ronningen and members of the Planning Commission

From: Ron Moore, City Administrator

Date: March 28, 2017

Re: Ordinance Amendment Eliminating “Storage Enclosed or Screened Principal Use” from the List of Allowed uses in the I1A and I1B Zoning Districts

The Council, at its November 15, 2016 meeting, referred to the Planning Commission the review of the allowed uses in the Industrial zones, including the elimination of Storage Enclosed or Screened Principal Use as an allowed use in the Industrial zones. An ordinance amendment reflecting the elimination of this use was provided to the Planning Commission, and a notice was published for a public hearing at the Commission’s January 9, 2017 meeting.

The Planning Commission questioned whether the ordinance amendment should eliminate both “storage enclosed” and “storage screened” because a number of uses in the Industrial zones include enclosed storage. The ordinance amendment was continued to the February 6, 2017 meeting to enable staff to review the current ordinance requirements and determine the appropriate language for the ordinance amendment.

The Planning Commission’s concerns were provided to the City Council and discussed at the January 17, 2017 Council meeting. The Council determined that both storage enclosed and storage screened should be eliminated as a principal use. A Council’s purpose is to eliminate uses such as mini storage, which are not attractive and do not generate quality jobs or significant tax base. This would not eliminate currently allowed principal uses that involve enclosed storage, such as warehousing and transportation/motor freight terminal.

### Broader Review of Code Language Regarding Storage

There are a number of uses listed in the zoning code that are related to storage. The list of allowed uses includes a number of conflicts related to whether uses are allowed or prohibited. The following are three examples:

- While the current code prohibits “Storage, not accessory to permitted principal use”, it allows Storage Enclosed or Screened Principal Use. These two provisions are in direct conflict.
- While the current code prohibits “Exterior sales and storage” it allows Exterior sales and storage (wholesale only). Because the code also allows “Wholesale business” and “Nursery and garden supplies (wholesale)”, it appears that allowing Exterior sales and storage (wholesale only) is at least partially related to the Nursery and garden supplies (wholesale) use. While exterior storage may be necessary for a wholesale nursery, and a nursery fits the rural character of Afton, exterior storage related to other wholesale businesses may not be necessary and may not fit Afton’s rural character.

### Staff Recommendations

It appears that, beyond the attached ordinance amendment, additional work regarding current regulations related to storage is needed to resolve existing code conflicts and to ensure the existing code language is consistent with the types and character of uses desired in the industrial zones. Staff is recommending the Planning Commission consider the following changes to the list of uses and related definitions of uses, including the attached ordinance amendment.

1. Eliminate “Storage enclosed or screened principal use”. This eliminates all storage as a principal use except as allowed as part of a specifically allowed use i.e. motor freight terminal or warehousing.
2. Clarify the definition of Warehousing to exclude mini-storage.
3. Eliminate “Exterior Sales and Storage (wholesale only)”, because the types of wholesale uses that would be desired do not require exterior sales or storage. The only exception to this may be “Nursery and garden supplies (wholesale).
4. While the code does not allow “Nursery, wholesale growing of plants” in the industrial zones, it does allow “Nursery and garden supplies (wholesale). There is currently no definition of this use. It is not clear whether this use includes any wholesaling of plants, which could require exterior storage. The Planning Commission may want to determine whether this use should be retained or not, and whether a definition needs to be added.

Staff is requesting direction from the Planning Commission to guide the review of the regulations related to storage.

### Planning Commission Direction Requested:

1. **Motion regarding the ordinance amendment eliminating “Storage Enclosed or Screened Principal Use” from the list of allowed uses in the I1A and I1B Zoning Districts.**
2. **Motion to provide direction regarding the review of the current regulations regarding storage in the Industrial Zoning Districts.**

**ORDINANCE 02-2017**

**CITY OF AFTON, MINNESOTA  
WASHINGTON COUNTY, MINNESOTA**

**AN ORDINANCE AMENDING CHAPTER 12, LAND USE, TO DELETE “STORAGE, ENCLOSED OR SCREENED PRINCIPAL USE” FROM THE LIST OF ALLOWED USES IN THE I1A and I1B ZONING DISTRICTS IN SECTION 12-134. USES**

**THE CITY COUNCIL OF THE CITY OF AFTON, MINNESOTA HEREBY ORDAINS:**

**The following section of the Afton Code of Ordinances shall be amended by adding the underlined language and deleting the strike-through language.**

Sec. 12-134. Uses.

Uses in the various districts shall be as follows:

P = Permitted use

A = Permitted accessory use

A/C = Permitted accessory, conditional use permit required

C = Conditionally Permitted Use

I = Interim Use Permit

ADMIN = Administrative Permit Required

N = Not allowed \* = Except as otherwise noted

	Agricultural	Rural Residential	VHS Residential	VHS Commercial	Light Industrial	Light Industrial	Light Industrial	Marine Service
	(A)	(R)	(VHS-R)	(VHS-C)	(I1-A)	(I1-B)	(I1-C)	(MS)
<b>Storage enclosed or screened principal use</b>	N	N	N	N	<u>€N</u>	<u>€N</u>	N	A

This ordinance shall take effect upon publication of this ordinance.

**ADOPTED BY THE CITY COUNCIL OF THE CITY OF AFTON THIS 17<sup>TH</sup> DAY OF JANUARY, 2017.**

**SIGNED:**

\_\_\_\_\_  
Richard Bend, Mayor

**ATTEST:**

\_\_\_\_\_  
Ronald J. Moorse, City Administrator

- Motion by:
- Second by:
- Palmquist:
- Richter:
- Ross:
- Nelson:
- Bend:

City of Afton  
3033 St. Croix Trl, P.O. Box 219  
Afton, MN 55001

# Planning Commission Memo

## Meeting: April 3, 2017

To: Chair Ronningen and members of the Planning Commission  
From: Ron Moorse, City Administrator  
Date: March 28, 2017  
Re: Comprehensive Plan Update – Solar Access

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At the January 9, 2017 Planning Commission meeting, Chair Ronningen asked the Commission members to provide any additional comments regarding the Comprehensive Plan to the City Administrator for the Planning Commission meeting agenda packet. The following comments regarding the solar access language in the Comprehensive Plan and in the Zoning Code were provided by Commissioner Nelson.

### Solar Access

2008 Comp Plan on p. 18 states "Section 12-132 prohibits the construction of any structure that will block solar access for an existing principal structure or infringe on the solar access of a vacant lot." With the adoption of the Solar Energy Systems Ordinance, the 12-132 clause was removed from that section, moved to 12-230 D.2.a. in the new code, and slightly modified: "No structure shall be erected that will block solar access for existing principal structures or infringe on the solar access of the buildable area of a vacant lot or parcel." 12-230 also provided a strong definition of solar access as: "Unobstructed use of the solar resource on a lot or building." Side setbacks of 10 feet in the VHS District create a possible conflict at adjacent parcels with one property owner possibly claiming the right to unobstructed use.

Proposal for modification of Comp Plan: Section 12-230 prohibits new and modified structures from blocking reasonable capture of Solar Resource within the buildable area of other parcels, including vacant lots.

Proposal for modification of 12-230 D.2.a. : New and modified structures must allow the buildable area on other parcels to achieve reasonable capture of Solar Resource in square footage set according to parcel size and zoning district by this article, including for the buildable area of a vacant lot or parcel.

By referring to the quantities of solar capture set by 12-230, a parcel in the VHS would be protected only up to 150 square feet of solar panels, or 1% of the lot's square footage, whichever is less. By writing this protection in terms of Solar Resource, the protected status exists between the hours of 9:00 AM and 3:00 PM, avoiding the long shadows of early morning and late afternoon/evening.

### **PLANNING COMMISSION DIRECTION REQUESTED:**

**Provide direction regarding the proposed Comprehensive Plan and Zoning Code language changes regarding solar access.**

### City Council Highlights 3-21-2017

The Council held a public hearing regarding the abatement of property taxes to be redirected to the 2017 Street Improvements Project, and adopted a resolution approving the property tax abatements

The Council adopted a resolution providing for the competitive negotiated sale of \$3,500,000 General Obligation Tax Abatement Bonds Series 2017B to finance the 2017 Street Improvements Project

The Council held a public hearing regarding an ordinance amendment to integrate Minimal Impact Design Standards for stormwater management into the Zoning Code and approved the ordinance amendment

The Council approved a resolution in support of legislation providing funding for local road improvements, to be drafted based on a template provided by the League of Minnesota Cities

The Council approved the price quote of \$24,908.00 from TriCounty to install the culvert extension at 30<sup>th</sup> Street

The Council adopted the assessment roll for the Downtown Village Improvements Project and called for a public hearing regarding the assessments to be held on Wednesday, April 26, 2017 at Memorial Lutheran Church

The Council adopted a resolution authorizing the City Engineer to sign the construction plans for the Washington County Afton-Lakeland Trail repaving project

The Council authorized the City Administrator to propose best management practices for the management of a City credit card to be used by selected City staff

The Council approved the low price quote from TrueNorth Steel to provide the 41 culverts needed for the 2017 Street Improvements Project, at a cost of \$36,275.42, and approved the cost of \$2,000 for erosion control blanket and seed for all culvert replacements

The Council approved the low price quote of TriCounty, in the amount of \$98,400, for the removal of existing culverts and installation of new culverts for the 2017 Street Improvements Project

The Council selected Peterson Management Company as the contracted operator for the wastewater treatment system at an annual cost of \$18,100

The Council approved Change Order No.1 for the Wastewater Treatment System Project in the amount of \$152,324, or 8.3%, to reflect cost increases due to project delays and design revisions

The Council approved the proposal from Blondo Consulting, for archeological monitoring during excavation near the Rattlesnake Mound Group, at an hourly rate of \$75.00.

The Council approved Mayor Bend's participation at a three-day emergency management training session at a cost not to exceed \$500.

The Council approved skim coat patching where needed on River Road at a cost not to exceed \$25,000, subject to review by the Public Works Committee

# Workshop Series for Local Officials!



**Brought to you by:**  
Government Training Services and  
the St. Croix River Association

**For:** Local officials, planning commission  
members, and interested parties

*Connect with other community leaders and learn more about planning and zoning.  
Appetizers provided and cash bar available.*

**Brine's Bar & Restaurant – 3rd floor  
219 Main St. S.  
Stillwater, MN 55082**

**April 18th, from 2:30pm to 5:30pm** – “A Practical Guide to Variances in the Shoreland,  
Riverway, & Floodplain”

**April 25th, from 3:00 - 6:30pm** – “Basics of Planning & Zoning”

**May 2nd, from 3:00 - 6:30pm** – “Beyond the Basics of Planning & Zoning”

Register online for one or multiple workshops: [www.regonline.com/2017landuse](http://www.regonline.com/2017landuse)

**Cost per workshop:** \$65

**Cost per workshop for leaders working on the St. Croix River:** \$35

The St. Croix River Association is providing \$30 off registration fees for local leaders from communities along the St. Croix River. Use the code **CRA35** to receive this discount.