

City of East Bethel
Planning Commission Agenda
7:00 PM
February 25, 2014



Agenda

	Item
7:00 PM	1.0 Call to Order
7:02 PM	2.0 Adopt Agenda
7:03 PM	3.0 Approval of meeting minutes - December 17, 2013 - January 28, 2014
7:10 PM	4.0 Discussion regarding Variance Statute changes
7:20 PM	5.0 Planning Commission – Refresher
7:45 PM	6.0 Met Council 2040 Framework
8:00 PM	7.0 Goal Setting - 2014
8:15 PM	8.0 City Council Update
8:20 PM	9.0 Adjournment

EAST BETHEL PLANNING COMMISSION MEETING

December 17, 2013

The East Bethel Planning Commission met for a Special Planning Commission Meeting on December 17, 2013 at 7:00 P.M for their regular meeting at City Hall.

MEMBERS PRESENT: Brian Mundle, Jr. Tanner Balfany Randy Plaisance Eldon Holmes
Lorraine Bonin Glenn Terry

MEMBERS ABSENT: Lou Cornicelli

ALSO PRESENT: Colleen Winter, Community Development Director

Call to Order & Adopt Agenda

Mundle motioned to adopt the December 17, 2013 agenda. Terry seconded; all in favor, motion carries unanimously.

Sketch Plan Concept – Proposed KOA campground/resort area

Background Information as presented by Colleen Winter, Community Development Director

The Developer represented by Dave Engfer came to see me a couple of months ago with an interest in putting in townhouses and a campground. I told him that the townhouse concept was not possible due to the location and the high density. This particular parcel is located on the very eastern edge of East Bethel and is currently zoned Rural Residential. There is not a possibility of providing municipal services to this site. So now the Developer is requesting that the City consider letting them do more of a resort/campground park in this area. They envision it being similar to KOA campgrounds where the amenities are on-site.

Currently under Rural Residential the following uses are allowed:

SECTION 42. RURAL RESIDENTIAL (RR) DISTRICT

Purpose.

- A. The rural residential (RR) district is designed to accommodate residential land uses at low densities that promote the rural character of East Bethel and provide an environment of peace and tranquility for district residents. Residential uses within this district shall rely upon on-site sewage treatment systems and private wells rather than public utility facilities. No more than one single-family dwelling is permitted per lot.

Permitted uses.

- A. Single-family detached dwelling.
- B. Licensed residential facility—Serving six or fewer persons.
- C. Recreation-public.
- D. Agricultural use.
- E. Essential services, government.

3. Accessory uses.

- A. Private garage, carport, or parking space.
- B. Private swimming pool, tennis court, or other similar facility used by a single family.

- C. Shelters temporarily located on-site for construction activities during construction or for six months, whichever is less.
- D. Accessory structures as regulated by Section 14. [Detached] Accessory Structures.
- E. Unlicensed daycare facility serving six or fewer persons.
- F. Licensed daycare facility serving 14 or fewer persons.
- G. Pasture—other uses customarily associated with but subordinate to a permitted use as determined by the city council.
- H. Radio and television receiving antennas including single satellite dish TVROs, short-wave radio dispatching antennas, or those necessary for the operation of household electronic equipment including radio receivers, federal licensed amateur radio stations, and television receivers as regulated by [Section 17](#) [16]. Telecommunication[s] Facilities.
- I. Kennel, private.

4. Conditional uses.

- A. Places of worship.
- B. Schools.
- C. Cemeteries.
- D. City-sponsored senior housing.
- E. Essential services, utility substation.

5. Interim uses.

The following interim uses are permitted in the RR district with an interim use permit:

- A. Home occupations, as regulated by Section 10. General Development Regulations.
- B. Golf courses.
- C. Outside storage of more than five motor vehicles, recreational vehicles, items of equipment, or trailers.
- D. Grading activities that move more than 1,000 cubic yards of material per acre.
- E. Amateur radio antennae less than 30 feet in height.
- F. Domestic farm animals as regulated by City Code [chapter 10](#)
- G. Craft center.

Here are the definitions of Recreation:

Recreation, commercial: Land intended to accommodate uses that provide active and passive recreational opportunities on a use and/or membership fee basis. Land designated for commercial recreation use differs from land designated for park and recreation use in that it is privately owned land rather than being publicly owned.

Recreation, public: Land intended to accommodate uses that provide active and passive recreational opportunities whether or not on a use and/or membership fee basis. Land designated for public recreation use differs from land designated for commercial recreation use in that it is publicly owned land rather than being privately owned. Typical uses include tot lots, neighborhood parks, community parks, ball fields, public golf courses, public gardens, green ways and trail corridors, beaches, and community centers.

The area we are discussing is located between 217th to the north and Linwood Township to the east. Winter said she was approached by a developer who is interested in developing the area in to a town home concept. High density is not really feasible. They went to the drawing board and they decided to put in a RV campground. The Planning Commission needs to look if it is something that is permitted in our comprehensive plan. There are several questions that we might want to consider.

The questions that the Planning Commission needs to answer are:

Does this fit under Rural Residential?
Should it be considered a Conditional Use Permit?
Does this fit in our Comprehensive Plan?

Commercial is privately owned land, rather than publicly owned land.

Winter showed an overlay of the land of their original concept. It is a wooded area, but there are not a lot of unique features. She needs to get back to these folks.

Bonin asked is there no water and place for a beach? Winter said no. Bonin said why would they want to do it there? Plaisance said because they own the property. Bonin said maybe they are looking at putting in an elaborate swimming pool. Plaisance said he doesn't see the draw here. He hasn't talked to the people. He doesn't see any reason why you would want to do that here. There is no recreation around this parcel here. Mundle said it is within a couple miles of the lakes. It is between Hwy 65 and 35. Plaisance from our standpoint it isn't our determining factor if this is a good business. But we do need to look to see if it fits into our comprehensive plan.

Winter said KOA's are on interstates not in areas like this. But they do want to be a KOA. Holmes said KOA has changed all their policies. The one he knows about went from being a KOA to just a campground. He said we do have some responsibilities to the wetlands. He doesn't see how you could make a go of it. Terry said could this go into a mobile home site. Winter said there is a concern of that, but they are marketing it as an RV park. They would come here and stay three to four months. It is really an RV park. Would you allow that? Is there a certain amount of time they could stay there? Mundle said some snowbirds would bring up a large fifth wheel and leave it permanently, and then lock it up in the fall and drive south. Terry said if the initial impulse is townhouses, he is probably trying to do something along those lines rather than a campground in the middle of nowhere.

Mundle asked if it is affiliated with the RV park on the west side of East Bethel Community School in Cedar Creek. That place has been there for a really long time. Do you know the background on the location? He assumes it was grand fathered in. Is it operated as a CUP? Winter said it is a legal non-conforming use. It has been there a long time and very well managed. It is a niche market. Bonin said they have been there for at least forty years. Mundle said could there be any correlation regarding zoning laws for these two areas.

Winter said she would need to check the zoning. Mundle said that is rural residential. Winter said under rural residential you do allow public recreation. The only difference between public and private recreation is ownership. By definition would you consider this as a permitted use? Recreation is not spelled out in the definition. Would you want to do a zoning text amendment or do you simply feel that it doesn't fit the area.

Mundle said a campground is where you pitch a tent. An RV park has roads and services. Winter said is the proposed use by definition close enough to a campground that you would allow it in rural residential. Mundle said there is a big difference between the two. Plaisance said wouldn't we need a way to define that. He has a hard sided pull behind camper. It isn't a pop up. So his question is, if we are going to differentiate, we need to define a campground for tents or an RV park. That which provides electrical and sewer amenities. That would be a question that we would have to come along with.

Mundle asked if the State has definition of what a campground and RV parks are? Winter said yes, they probably do. Mundle said if the State has the definitions, we should look at those. That would be a starting point. Bonin said a campground resort area, she doesn't think the area is suitable for either a campground or a resort. She doesn't think it fits. Mundle said could you elaborate on the campground. Bonin said would you go to a campground that didn't have a beach. Holmes said when he thinks of a campground with water, electricity and septic system. He doesn't see a septic system and a well there. What do you do with this if it doesn't succeed? Winter said it would have to be a community well and sewer system. Holmes said to him it doesn't fit.

Winter said there is a just a little bit of wetland. On 217th, there are about 10 or more acres or so; they show that would be good for housing. Holmes said most RV parks have a pool, community room and showers. Balfany said there are restrictive campgrounds without RVs and they still have showers and amenities. Holmes said they would need amenities. It is at least a mile away from Linwood. Balfany said he doesn't see it fitting in the rural residential district. Plaisance said does it fit the ordinance. He doesn't think it does. It is touching a little bit on what Bonin said. In this area, when we are considering the composition of the city is that where we want to have this type of business going on. If it was near the golf course or disk golf course, where there is recreation available that would make sense. It is really tough for me to plop things down all willy-nilly over the city. This doesn't make sense. For that reason it would not have his support.

Balfany said does it fit our comp plan. Terry said we make a big deal about putting people in an outbuilding. We could be adding forty additional families. Plaisance said we are not just talking about someone making a business around Coon Lake, and marketing as an RV park/campground. Where you can park for a couple weeks and do recreation. Rather than a permanent structure for my kid to drive me crazy to live in. He thinks these are a little bit different.

Terry wondered if bed and breakfast allowed in rural residential. Winter she said it doesn't appear they are. Balfany read the entire list. Winter said we would

have to look at the general development regulations that would reference the bed and breakfast. Terry said this is closer to a bed and breakfast. Bonin said at a bed and breakfast they come for one night. They don't bring something and keep it there. What they could do with this place is almost like a bed and breakfast. They would sleep there and have breakfast there, and go somewhere else for recreation. Plaisance said in R1 and B2 Bed and Breakfast are allowed, not in rural residential. Winter will go back to them, and tell them the opinion of the Planning Commission that it probably doesn't fit. We are opposed to the RV park concept. Balfany said that is a fair statement. Mundle said we would need a business plan. Winter said they didn't want to spend the money if it wasn't going to happen. Balfany said it is a stretch.

2013 Accomplishments Some of these are economic development related and planning commission. One can't happen without the other.

2013 Accomplishments

- Facilitated discussions, coordinated and participated in a cost share agreement with Anoka County Highway Department on behalf of East Bethel Properties, LLC, so that they were able to participate in improvements to their private party at the same time that Anoka County Highway Department was completing a major construction overlay project on County Highway 22 (Viking Blvd.). Resulting in a substantial cost savings for East Bethel Properties, LLC. To date we haven't seen a concept plan. They are continuing to work on things.
- Developed Zoning Text Amendment Changes for Section 14, Accessory Structures. We also talked about several other sections of our zoning ordinances.
- Discussed Home Occupations, Accessory Structures, and Exterior Storage requirements. The sub committee has been working on it and hopefully that will come back soon.
- Minimum Impact Design Standards – met and discussed several times. By the end of this year, we have to get our MS4 stormwater plan in. There is a 180-day comment period. PCA is looking at minimum impact design standards. We will see MIDS be a part of any development in the future. That probably won't come from us, but from the State of MN.
- Held a joint meeting with EDA to discuss Hwy. 65 corridor; Comprehensive Plan; City Center District. This is something we have to continually have to say on. She would like to have as much flexibility as we can. With the thought that there would be an overall design or theme of the area. We need to carefully plan for densities. We need flexibility in our codes. Like we are seeing with Viking Preserved there needs to be cohesive.
- Approved Preliminary Plat of Viking Preserve a 60 lot single family planned unit development project south of Anoka County Highway 22 and west of CSAH 65.
- Remodeled Community Development offices to make them more customer friendly and streamlined services. There was not a drop down window, there was a wall and door and it wasn't customer friendly. By remodeling the area and we reconfiguring, we can now provide better service.
- Hired additional Building inspector. We also have a new permit tech and

administrative assistant.

- Started contract with Oak Grove for building inspection services. This is going very well. We also have a contract with Bethel.
- New construction housing – 17 homes East Bethel and 51 Oak Grove. The GIS department is looking at how many homes are in our rural development inventory. In Whispering Aspen there is development. We are in the midst of the forcemain project.

Business Expansions/Start-ups/Relocation

- **Aggressive Hydraulics – 18800 Ulysses St NE.** Opened its new 62,000 square foot corporate and manufacturing facility in July 2013. No. of Employees - 47.
 - City assistance included Tax Increment Financing. She thinks they may have come before the planning commission. Mundle said we did a plan review.
- **North Country Concrete, Inc. - 23035 Ulysses St NE.** Recently moved from Ramsey to East Bethel. This is the Shade Tree building. They acquired an existing 18,000 square foot facility and purchased vacant lots resulting in a total land purchase of 12 acres. No. of employees – 75.
 - City assistance included meeting at the Ramsey location to see their operation and to answer any questions that they have about planning and zoning regulations in the City of East Bethel.
- **TinMan Fabrication, Inc. – 21461 Aberdeen St NE.** Recently moved into a vacant building, made significant improvements and relocated their business from Oak Grove to East Bethel. No. of Employees – 3.
 - City assistance included helping them obtain a Conditional Use Permit
- **Minnesota Fresh Farm – 20241 Hwy 65 NE.** Obtained an Interim Use Permit for agri-tourism activities. Business Start up.
 - City assistance included helping them obtain an Interim Use Permit

Planning Activities

- **Home Occupation permits – 5**
- **Interim Use Permits – 6**
- **Conditional Use Permits – 2**

Variances – 2

Holmes wanted to know if the City has to get approval from the State on the variances. Winter said no. Holmes said he brought it up a couple of times. The State of MN has brought up some sort of documentation. Winter said she would check at the State level (planning office) and see. She hasn't heard of it. Terry said you sent us something about that. How the restrictions were going to be tighter. Mundle said this year. Holmes said it might have happened last year. Mundle said the variances were frozen by the State. But they have come off. Balfany said Winter would look into it.

2014 Goals

Winter said we continue to work on different things. Obviously form based planning. The corridor and we need to continue on that path. We need to work on a comp plan and that isn't a cheap proposition to do. If there are grant dollars we should apply for them. She knows that Met Council will be giving away planning dollars and she would like to apply for those.

She wondered if anyone saw the op ed piece about Met Council's MSP 2040 transportation plan. They are focusing on the urban corridors, where people can walk and ride bikes. The rural growth centers are being left out of their plan. They don't expect us to grow by much. It is a little bit frustrating and disheartening. As was pointed out to her, this is nothing new, the pendulum kind of swings with them.

We do need to hold a legislative forum in January or February. We need to talk about the partnership with Met Council. We also need to get the legislators to understand how important 187th intersection becoming signalized is for our community. In order for us to effectively promote and develop the east side. It was in their plan in 2000 and 2005/6. We have to continue to push.

As a Planning Commission you might have opinions on what you would like to see us work on. Mundle said he would like to see more joint meetings with the EDA for brainstorming with on the water district.

No other ideas.

Approval of Minutes

Mundle said on page 10, fourth paragraph down, first sentence, states Mundle said there are several trees. Trees should be changed to locations.

Bonin has one comment on page seven, fourth paragraph. This is an entry-level development. Most people might look at it as an entry-level development. This is a high-density development with sewer and water. That might make their life easier living there. Mundle said it is just stating that the price of these homes are here to here. It is entry level pricing. Maybe we should add entry level pricing. In Whispering Aspen there are entry level. Some are first time homebuyers, and some are seniors. Balfany said it refers to price. Bonin said it colors how you promote the place. Winter said it is from their marketing.

Terry said he would like to strike to based on residents concerns.

Bonin made a motion to approve the minutes with changes. Terry seconded; all in favor, motion carries unanimously.

Winter wanted to thank the Planning Commission members. She wants to thank the members for their insight. You are very supportive of staff. We are really doing a good job in terms of customer service. You present yourselves and your professionalism.

Mundle said his three years will be up for reappointment and has been an honor working with all of you. He has learned a lot from everyone. He enjoys bickering with everyone and coming to a good conclusion and still work together.

Balfany said his term is also up and he is going to say ditto. It has been a good run. He appreciates the support of everyone as the chair. He will see next month if he is back next month. Mundle said his first meeting was in January. If that is the case, just we will present them again at the next meeting.

Terry wondered if there were two seats open. Winter said there have been no other applicants at this point. Terry said he does appreciate the continuity of the people returning. It is nice that we can refer back to certain things.

Adjournment

Holmes made a motion to adjourn the meeting at 7:54 p.m. Mundle seconded; all in favor, motion carries.

Submitted by:

Jill Anderson
Recording Secretary

EAST BETHEL PLANNING COMMISSION MEETING

January 28, 2013

The East Bethel Planning Commission met for a Special Planning Commission Meeting on January 28, 2013 at 7:00 P.M for their regular meeting at City Hall.

MEMBERS PRESENT: Tanner Balfany Randy Plaisance Eldon Holmes Glenn Terry
Lou Cornicelli Brian Mundle, Jr. Lorraine Bonin

MEMBERS ABSENT:

ALSO PRESENT: Colleen Winter, Community Development Director

Call to Order & Adopt Agenda

Holmes motioned to adopt the January 28, 2013 agenda. Mundle seconded; all in favor, motion carries unanimously.

Oath of Office

City Council has received letters of interest from commission members wishing to continue work for the Planning Commission. On January 8, 2014, City Council appointed the following to the Planning Commission:

1. Tanner Balfany (reappointed), term expires January 31, 2017
2. Brian Mundle, Jr (reappointed), term expires January 31, 2017

Each commissioner will be taking an oath of office this evening.

I, Tanner Balfany do solemnly swear or affirm that I will support the Constitution of the United States of America and the State of Minnesota, and faithfully discharge the duties as a member of the City of East Bethel Planning Commission in the County of Anoka and the State of Minnesota to the best of my ability. So help me God.

I, Brian Mundle, Jr do solemnly swear or affirm that I will support the Constitution of the United States of America and the State of Minnesota, and faithfully discharge the duties as a member of the City of East Bethel Planning Commission in the County of Anoka and the State of Minnesota to the best of my ability. So help me God.

Congratulations.

Elect Planning Commission Chairperson and Vice Chairperson

Background Information:

The Planning Commission is to elect a chairperson and vice chairperson from among the appointed members for the term of one (1) year.

East Bethel City Code states that chairperson and vice chairperson shall serve for one year; however, no chairperson shall be elected who has not completed at least one year as a member of the commission. Commission members eligible for chairperson include Balfany, Bonin, Cornicelli, Holmes, Plaisance, Mundle, and Terry.

Recommendation:

City Staff is requesting the Planning Commission, in separate motions elect a Chairperson and Vice Chairperson for the term of one (1) year, starting on January 28, 2014 and expiring on January 27, 2015. It should be noted that Mr. Mundle is the current Vice-Chair, and should succeed the existing Chairperson, Mr. Balfany.

Motions for recommendation for chairperson. **Cornicelli motioned for Mundle as Chair of the Planning Commission. Balfany seconded the motion; all in favor, motion carries unanimously.**

Motions for vice-chair person for one year. Anyone have an interest in the position. It will be in succession up to the chairperson. **Bonin motioned for Terry for Vice Chair of the Planning Commission. Holmes seconded; all in favor, motion carries unanimously.**

Revised Concept Plan Viking Preserve Planned Unit Development, Zoning R1, R2, and CC.

Background Information:

The Preliminary Plat for Viking Preserve, a single family residential Planned Unit Development was approved by the City Council on December 4, 2013. As part of the review process several outside agencies submit their comments and the City works with the Developer to incorporate those changes into the Final Plat and as part of the Developers Agreement. Any permits that are required from outside agencies, such as stormwater permitting, access permits, etc. are the responsibility of the Developer. The City also holds a pre-application meeting with the Developer and City Staff to go through the Development process and make the Developer aware of all of the upcoming timelines and walk them through the process, including identifying what outside agencies would be involved.

The pre-application meeting took place on October 8th. In the case of Viking Preserve there were several identified wetlands on their project and so the City pulled together their Technical Evaluation Panel (TEP) that is responsible to review all wetland issues. This panel consists of representatives from the City (Becky Wozney, wetland specialist with Hakanson Anderson), Anoka County Soil and Water Conservation District, Board of Water and Soil Resources, and Army Corps of Engineers. Just as the City has a pre-application meeting with the Developer, the TEP also meets with the Developer to go through the process and identify what permits and requirements are needed from each agency. In the case of Viking Preserve the TEP met several times. The following is the timeline for the TEP:

- Notice of Wetland Delineation and Notice of Application for Wetland Delineation sent to all parties (TEP and Corps): 11/5/2013
- Aaron Diehl and Becky Wozney wetland delineation onsite: 11/11/2013. All were invited but availability was an issue.

- TEP and Corps of Engineers met on 12/6/2013. It was determined that the park trail should be removed; the commercial impacts (Outlot B) removed; and sequencing information needed for impacts from Taylor St. The large wetland excavation was discussed as well as filling the excavated sand pit. Jurisdictional status was discussed. TEP and Corps request additional information. Developer was given verbal permission to remove snow so that ground could freeze in anticipation of further excavating the site. It should be noted that at this time the Army Corps of Engineers did not give any indication that a standard permit would be required.
- On 1/2/14 receive email correspondence from the Corps indicating that the Viking Preserve would be required to go through a standard permit review (120 days or longer). Up until this point we had not gotten an indication that this would be the case. The Developer and all other parties were under the understanding that this project would fall under a Letter of Permission process (60 days or less).
- On 1/3/14 meeting pulled together with the Developer and their representatives, City representatives, and the Project Manager of the Army Corps of Engineers discussing Viking Preserve and Army Corps of Engineer process. Based on that discussion, Developer's surveyor and environmental engineer proceeded with putting together additional information for the Corps, Project Manager from the Corps stated that he would visit with his Supervisor on this project and get back to affected parties.
- On 1/6/14 letter from the Corps received by Developer, copy sent to city outlining process for standard permit review, this is not the same process that was indicated by the Corps earlier.
- City Staff discussed this project with the Corps on the phone and a conference call was set up between the Developer, Corps, and City representatives on 1/9/14. Corps did not waiver from their stance that a standard permit was required and gave every indication that it would not be approved.

Based on the Army Corps of Engineers concerns, the Developer decided to substantially revise their project so that they minimized the Army Corps of Engineers involvement in the process. The new Concept Plan is included with this write up and the following are the changes:

This layout provides 49 single-family lots. Original project had 60 lots.

- Developer is proposing to stop the street construction for Taylor Street just beyond our intersection with 193rd Lane. This greatly reduces their wetland issue, as we believe we can fall under ½ acre of impact. Developer no longer proposing any future homes beyond the proposed Lot 25, so public access will not be necessary.
- There may be space to create a small berm along the south side of Block

1 along Viking Boulevard, otherwise buffer to Viking Boulevard will be 193rd Lane and future plantings.

- Proposed ponding areas are indicated.
- Developer will continue to provide Outlot C as a buffer and recognize the need to preserve existing trees.
- Developer proposing to dedicate the additional 15 feet of right of way, to satisfy Anoka County Highway. This was part of the Anoka County's review.
- The Developer may submit both his revised preliminary and final plat at the same time.

Fiscal Impact:

There will be a loss of 11 total SAC and WAC units that will reduce these fees from \$336,000 to \$274,400.

There was a drastic change in philosophy due to the Army Corp. They elected to alter their plat. The Corp review is minimized and they would have less than a half of an acre that would be governed by the Army Corp. This will come to the Planning Commission, and a new public hearing, preliminary and final plat at the meeting.

This is what they are proposing for Taylor Street. They are proposing to have lot 25 on Taylor Street. All the additional will not be built as a street. It is shown as right of way when the area develops. They did reduce the amount of lots. They will not have the large berm on 193rd. They will have plantings. The pond stayed relatively the same. There is also a wetland they will not touch. The trail is still proposed to be as before.

Mundle asked about the language regarding removing the trail. Winter said they would remove the trail on Outlot A. There were a number of reasons to remove – the Army Corp is putting it through a 120 process. The City is recommending putting it as a future easement. It would be trails fee per lot. The sidewalks are still there, the lighting is still proposed.

Bonin said the Outlot A is that always going to be a trail or a road. Winter said it is a wetland, so it will largely stay that. That is a separate process now. The proposed way for the lighting and mailbox will stay. The tree preservation plan will stay the same. We have lost 11 lots. Taylor Street is going to dead end sooner, due to no benefit.

Holmes asked where 193rd comes down towards Viking, will there be a fence there. Winter said they are going to do a berm there; they probably will do a series of plantings along here. She hasn't seen that design yet. Part of what they are intending to do is a pond on 193rd. They do not have the opportunity to do that and will have to truck in fill from another area. Winter said it is a

disappointment, they could have made that area on Outlot A a nice natural area. It isn't a pristine wetland. They would have made something that would have been much nicer. Someone in St. Paul said based on what they seen on piece of a paper it wasn't something they were willing to look at.

Holmes said Section 2 lot 15 and 16, they are essentially the same. Winter said there is very little change on this side. Outlot C is the same. In response to the neighbors concern, they brought it out a little more. The residents would very much like the developer actually put trees in. She is not sure the City would force the developer to do. We can everything for a tree preservation plan. They will have to do dust control and comply with construction hours.

Cornicelli said didn't they say they were going to visit with the neighbors. Winter said they have done that. Holmes said they still show a cul-de-sac in there. Is that future. Winter said they would be temporary cul-de-sacs for the future. Cornicelli said if they deal with the Corp issues in the future. Winter said the way the Corp dealt with this one, will have effects on all our developments in the future. Cornicelli asked if they had a staffing change. Winter said they did.

Terry said 16 –19 talk about possible ponding and 4/5 in section 2. He is wondering about the lots that are pie shaped, if someone lived there, and they had difficulty with their neighbor, how would they fence their lot in. They are sharing a backyard if you don't fence that. Winter said the scale is deceiving. These are good-sized lots. If you are going to fence, you might not fence the area going into water. Up to the possible ponding. Bonin said otherwise you fence off the two sides up to the pond. Plaisance wondered how close 193rd is to Viking. Terry said he doesn't know if it is desirable. Maybe it could have a barrier fence. Holmes said a jersey bounce. Terry said don't they make them out of wood. Winter said you mean the noise barriers. Mundle said he thinks it is 15 feet. Winter said it is off the right of way. If it is an additional 50 feet from the centerline. No maybe not that much. Holmes said yes, probably from the centerline. Plaisance asked if it has gone through Anoka County Highway Department. Winter said no, they have to finish the plan. Once they do, it will go there. They have already been advised of it though. We will have to bring it before the TEP panel. Plaisance said it makes him nervous it is so close to the highway. He knows it is not due to for another 25 years to make it a highway. That would impact that particular road. Being that close to the road, we would want some barriers, so kids don't cross over onto the street. Mundle said if there are a few trees there. Plaisance said what about when plows come by and remove the snow. Will there be enough room for the snow. Winter said they have already accommodated the request from Anoka County for additional 15 feet. 193rd is almost like a service/frontage situation. It would be somewhat like that. Balfany asked if there were any other points of discussion.

Holmes motion to approve the concept plan. Cornicelli seconded the motion; all in favor, motion carries unanimously.

Role of Planning Commission

The League of MN Cities has webinar training on Planning Commissions. She wants to bring it to show at the next meeting. We deal with land use. The planning commission job to make sure the City is following the comprehensive plan. There are a lot of different training materials. How many of you have taken the League of Minnesota Cities training on being a Planning Commissioner? None of the Commissioners. That might be something that would be worthwhile. Mundle has been to their website, once.

Council Report

Bob DeRoche has replaced the Mayor.

On February 5, there will be a legislative forum. Senator Hackbarth and Benson. We will be talking about bonding primarily. You are welcome to attend that.

Terry wanted to know if there was anything about sending us the City Council minutes we use to get. Mundle wanted to know if there were any minutes to approve at this meeting. No there are not.

Balfany asked if we do have a new business item. Does anyone have anything they want to address?

Adjournment

Holmes made a motion to adjourn the meeting at 7:37 p.m. Cornicelli seconded; all in favor, motion carries.

Submitted by:

Jill Anderson
Recording Secretary



City of East Bethel Planning Commission Agenda Information

Date: February 25, 2014

Agenda Item Number: 4.0

Agenda Item:

Variance Information

Requested Action:

For Information only

Background Information:

At the last meeting we discussed the changes that took place in Statute related to Variances and I have enclosed the revised statute for your review.

Attachments:

Statute 394.27

Explanation of new changes

394.27 CREATION AND DUTIES OF BOARD OF ADJUSTMENT.

Subdivision 1. **When controls adopted.** Whenever a board of county commissioners shall have adopted official controls it shall at the same time as the adoption of such controls create a board of adjustment by ordinance.

Subd. 2. **Procedure, qualifications.** The board of adjustment shall consist of at least three but not more than seven members, including at least one member from the unincorporated area of the county, whose appointment, term of office, or removal from the board shall be as provided in the ordinance creating the board of adjustment; provided that no elected officer of the county nor any employee of the board of commissioners shall serve as a member of the board of adjustment and that one member of such board of adjustment shall also be a member of any planning commission appointed under the provisions of sections 394.21 to 394.37. In an ordinance creating a three-member board of adjustment, provision may be made for one alternate member. The alternate board member shall, when directed by the chair, attend all meetings of the board and participate fully in its activities but shall not vote on any issue unless authorized to do so by the chair. The chair shall authorize the alternate board member to vote on an issue when a regular member is absent, physically incapacitated, abstains because of a possible conflict of interest, or is prohibited by law from voting on that issue. Any question of whether a particular issue involves a conflict of interest sufficient to disqualify a regular board member from voting thereon shall be decided by majority vote of all regular board members except the member who is being challenged. In the ordinance establishing the board of adjustment provision may be made for removal of any member for nonperformance of duty or misconduct in office and for the filling of vacancies for any unexpired term. The regular and alternate members of such board of adjustment may be paid compensation in an amount determined by the county board and may be paid their necessary expenses in attending meetings of the board and in the conduct of the business of the board.

Subd. 3. **Officers.** The board of adjustment shall elect a chair and vice-chair from among its members and shall appoint a secretary who need not be a member of a board. It shall adopt rules for the transaction of its business and shall keep a public record of its transaction, findings, and determinations.

Subd. 4. **Meetings.** The meetings of the board of adjustment shall be held at the call of the chair and at such other times as the board in its rules of procedure may specify.

Subd. 5. **Authority.** The board of adjustment shall have the authority to order the issuance of variances, hear and decide appeals from and review any order, requirement, decision, or determination made by any administrative official charged with enforcing any ordinance adopted pursuant to the provision of sections 394.21 to 394.37, order the issuance of permits for buildings in areas designated for future public use on an official map, and perform such other duties as required by the official controls. Such appeal may be taken by any person aggrieved or by any officer, department, board or bureau of a town, municipality, county, or state. In exercising its powers under this subdivision, the board of adjustment shall take into consideration the town board's recommendation when the board of adjustment's decision directly affects land within the town.

Subd. 6. **Appeals.** An appeal from any order, requirement, decision, or determination of any administrative official shall be taken in such time as shall be prescribed by the ordinance creating the board of adjustment by filing with the board of adjustment a notice of appeal specifying the grounds thereof. The board of adjustment shall fix a reasonable time for the hearing of the

appeal and give due notice thereof to the appellant and the officer from whom the appeal is taken and to the public and decide the same within a reasonable time which shall be defined in the ordinance establishing the board of adjustment. An appeal stays all proceedings in furtherance of the action appealed from unless the board of adjustment to whom the appeal is taken certifies that by reason of the facts stated in the certificate a stay would cause imminent peril to life or property. The board of adjustment may reverse or affirm wholly or partly, or may modify the order, requirement, decision, or determination appealed from and to that end shall have all the powers of the officer from whom the appeal was taken and may direct the issuance of a permit. The reasons for the board's decision shall be stated in writing.

Subd. 7. Variances; practical difficulties. The board of adjustment shall have the exclusive power to order the issuance of variances from the requirements of any official control including restrictions placed on nonconformities. Variances shall only be permitted when they are in harmony with the general purposes and intent of the official control and when the variances are consistent with the comprehensive plan. Variances may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the official control. "Practical difficulties," as used in connection with the granting of a variance, means that the property owner proposes to use the property in a reasonable manner not permitted by an official control; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems. Variances shall be granted for earth sheltered construction as defined in section 216C.06, subdivision 14, when in harmony with the official controls. No variance may be granted that would allow any use that is not allowed in the zoning district in which the subject property is located. The board of adjustment may impose conditions in the granting of variances. A condition must be directly related to and must bear a rough proportionality to the impact created by the variance.

Subd. 8. Filing orders. A certified copy of any order issued by the board of adjustment acting upon an appeal from an order, requirement, decision or determination by an administrative official, or a request for a variance, shall be recorded with the county recorder or registrar of titles. The order issued by the board of adjustment shall include the legal description of the property involved. The board by ordinance shall designate the county official or employee responsible for meeting the requirements of this subdivision.

Subd. 9. Appeal to district court. All decisions by the board of adjustment in granting variances or in hearing appeals from any administrative order, requirement, decision, or determination shall be final except that any aggrieved person or persons, or any department, board or commission of the jurisdiction or of the state shall have the right to appeal within 30 days, after receipt of notice of the decision, to the district court in the county in which the land is located on questions of law and fact.

History: 1959 c 559 s 7; 1963 c 692 s 5; 1974 c 571 s 23-29; 1976 c 181 s 2; 1978 c 786 s 13; Ex1979 c 2 s 40; 1981 c 356 s 248; 1984 c 392 s 1; 1986 c 444; 1987 c 312 art 1 s 10 subd 1; 2005 c 4 s 97; 2011 c 19 s 1

LAW OF THE LAND

A blog on land use law and zoning

Posted by: Patricia Salkin | September 10, 2011

MN Writes “Practical Difficulties” Into Variance Statute

In the 2010 decision [Krummenacher v. City of Minnetonka](http://lawoftheland.wordpress.com/2010/09/11/mn-supreme-court-adopts-strictier-meaning-of-phrase-%e2%80%9cundue-hardship%e2%80%9d-for-variance-requests/) (<http://lawoftheland.wordpress.com/2010/09/11/mn-supreme-court-adopts-strictier-meaning-of-phrase-%e2%80%9cundue-hardship%e2%80%9d-for-variance-requests/>) the Minnesota Supreme Court adopted a restrictive interpretation of “undue hardship” for city boards of adjustment to apply when deciding on variance applications. In May, the State of Minnesota “remedied” the situation by enacting legislation that put a “practical difficulties” standard into Minnesota state code. Under the new law, practical difficulties means (1) the property owner proposes to use the property in a reasonable manner permitted by the ordinance, (2) the owner’s plight is due to circumstances unique to the property not created by the owner, and (3) the variance will not alter the locality’s essential character. If the variance is granted with conditions, those conditions must be directly related to, and bear a rough proportionality to the impact of the variance.

The difference between “undue hardship” as applied by the court, and “practical difficulties” as passed by the legislature, is the absence of the requirement that the landowner show the property cannot be put to a reasonable use but for the variance.

The a copy of the new law can be accessed at: <https://www.revisor.mn.gov/bin/bldbill.php?bill=H0052.2.html&session=ls87> (<https://www.revisor.mn.gov/bin/bldbill.php?bill=H0052.2.html&session=ls87>)

Hat tip to Gary Taylor at the Midwest Planning Bluz Blog for posting this and explaining similarities with Iowa law here: <http://blogs.extension.iastate.edu/planningBLUZ/2011/08/15/minnesota-amends-code-to-change-variance-standard/> (<http://blogs.extension.iastate.edu/planningBLUZ/2011/08/15/minnesota-amends-code-to-change-variance-standard/>)

Posted in [New Legislation](#), [Variances](#)

Categories



City of East Bethel Planning Commission Agenda Information

Date: February 25, 2014

Agenda Item Number: 5.0

Agenda Item:

Planning Commission information

Requested Action:

For Information only

Background Information:

We will be going through the role of the Planning Commission member. In your packet are 2 different publications that address Planning Commission information.

Attachments:

League of MN Cities handouts



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, Chapter 4.](#)

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 - Role of the Planning Agency.

[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 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.](#)

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.

RELEVANT LINKS:

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

D. Councilmembers and city staff serving on the planning commission

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

1. Full voting members

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

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.

RELEVANT LINKS:

See LMC Information Memo, [Official Conflict of Interest](#). Part IV *Conflict of Interest in Non-Contractual Situations*. 56 Am. Jur. 2d Municipal Corporations § 142. [Lenz v. Coon Creek Watershed, Dist.](#), 278 Minn. 1, 153 NW 2d 209 (1967). [Township Bd. Of Lake Valley Township v Lewis](#), 305 Minn. 488, 234 N.W. 2d 815 (1975).

[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.

F. Conflicts of interest

When appointing planning commissioners, cities should be aware that appointed officials are subject to the same concerns related to conflict of interest as city councilmembers. In the appointment process, the city council should attempt to discern if potential conflicts of interest exist. Particularly, conflicts where it is obvious that the potential appointee's own personal interest is so distinct from the public interest that the member cannot be expected to represent the public interest fairly in deciding the matter.

G. Removal of planning commission members

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

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 \(c\).](#)

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

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

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 1.](#)
[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.353, subd. 2.](#)

[Minn. Stat. § 462.353, subd. 3.](#)

[Local Planning Assistance Agency Advice on Hiring at Planner.](#)

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.](#)

2. Preparing the comprehensive plan

State statute vests authority for preparing the comprehensive plan in the planning commission. However, the city council also may propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed. The plan may be prepared and adopted in sections, each of which relates to a major subject of the plan, or to a major geographical section of the municipality.

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

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.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Sample: Newsletter Article on Comprehensive Planning.](#)

[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.](#)

b) Public input

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

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

Non-metropolitan cities located in certain 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.

RELEVANT LINKS:

[Minn. Stat. § 462.355, subd. 2.](#)

[Minn. Stat. § 462.354.](#)

[Minn. Stat. § 473.858, subd. 2.](#)

[Minn. Stat. § 473.175.](#)

[Metropolitan Council.](#)

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

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

[Minn. Stat. § 462.355, subd. 3.](#)

3. Recommending the comprehensive plan to council

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

4. Adopting the comprehensive plan

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

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

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

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

c) 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.

RELEVANT LINKS:

See Section V: *Changing or Dissolving the Planning Commission*.

[Minn. Stat. § 462.356, subd 1.](#)

[Minn. Stat. § 462.356, subd 1.](#)

See LMC Information Memo, [Zoning Guide for Cities](#).

LMC Information Memo [Zoning Decisions](#).

See [Handbook, Chapter 14](#).

LMC Information Memo, [Subdivisions, Plats and Development Agreements](#). See [Handbook, Chapter 14](#).

[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.](#)

B. Implementing the plan

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

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

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

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

C. Role in periodic review of the comprehensive plan

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

Cities within the seven-county 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.

RELEVANT LINKS:

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

Minn. Stat. § 473.175.
Metropolitan Council.

Minn. Stat. § 462.355, subd. 3.

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

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

1. Procedure for amending a comprehensive plan

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

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

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

RELEVANT LINKS:

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

Minn. Stat. § 462.356, subd. 2.

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

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

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

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

F. Role in capital improvements program

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

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

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

The term capital improvement is not defined within the comprehensive planning statute. 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.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd 2.](#)
[Minn. Stat. § 462.352, subd 6.](#)

[Minn. Stat. § 462.357, subd 2 \(c\).](#)
For more information see LMC Information Memo, [Zoning Decisions](#).

[Minn. Stat. § 462.357, 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](#).

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.

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](#).

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd 4.](#)

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

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

[Minn. Stat. § 462.357, subd 3.](#)

[Minn. Stat. § 462.357, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 5.](#)

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. 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.

RELEVANT LINKS:

[Minn. Stat. § 462.3595.](#)

See LMC Information Memo, [Zoning Guide for Cities.](#)

See LMC Information Memos [Zoning Guide for Cities; FAQs on Conditional Uses; Zoning Decisions.](#)

[Minn. Stat. § 462.359, subd. 2.](#)
See [Handbook, Chapter 11.](#)
[Minn. Stat. § 462.352, subd. 7, 8.](#)

See LMC Information Memo, [Purchase and Sale of Real Property.](#)

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. 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.

RELEVANT LINKS:

[Minn. Stat. § 462.354, subd. 2.](#)

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

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

[Minn. Stat. § 462.354, subd. 2.](#)

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.

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

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

The ordinance creating the BZA should specify at minimum:

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

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

RELEVANT LINKS:

See Information Memos, [Zoning Guide for Cities](#) and [FAQs on Variances](#).

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

See [Handbook, Chapter 11](#). See also LMC Information Memo, [Subdivisions, Plats, and Development Agreements](#).

See LMC Information Memo [Subdivision, 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](#).

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

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

K. Role in review of subdivision applications

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

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

IV. Planning commission meetings

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

A. Open Meeting Law

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

RELEVANT LINKS:

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

[Minn. Stat. § 13D.01, subd. 1.](#)

[Minn. Stat. § 13D.01, subd. 6.](#)

LMC Information Memo
[Meetings of City Councils.](#)

For more information on the 60-Day Rule see the LMC Information Memo, [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).

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

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

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

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

B. The 60-Day Rule

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

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

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

RELEVANT LINKS:

[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\(a\).](#)

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.”

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.

RELEVANT LINKS:

[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\(b\).](#)

[Minn. Stat. § 15.99, subd. 3\(f\).](#)

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.

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.

RELEVANT LINKS:

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.

Minn. Stat. § 15.99, subd. 2(a), (e).

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

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.

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.

RELEVANT LINKS:

See [LMC Model Planning Commission Policy on Rules and Procedure](#).

See LMC Information Memo, [Meetings of City Councils](#).

See LMC Information Memo, [Public Hearings](#).

See [Handbook, Chapter 27](#).
[Minn. Stat. § 15.17, subs. 1, 2.](#)

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

C. Commission policies on order and meeting structure

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

The policy should establish procedures related to:

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

D. Minutes and official records

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

1. Minutes and records

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

RELEVANT LINKS:

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.](#)

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.

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."

RELEVANT LINKS:

[Minn. Stat. § 15.17.](#)
[Minn. Stat. § 138.225.](#)
[Minn. Stat. §§ 138.161-.21.](#)
[A.G. Op. 851F \(Feb. 5, 1973\).](#)
See [Handbook, Chapter 27.](#)

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 Burnsville.](#)

[Minn. Stat. § 462.354, subd. 1.](#)

[Minn. Stat. § 410.12.](#)
See [Handbook, Chapter 4.](#)

[Minn. Stat. § 462.355, subd. 3.](#)
[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 462.357, subd. 4.](#)

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

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.

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.

RELEVANT LINKS:

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

[Minn. Stat. § 462.3535, subd. 4.](#)

[Minn. Stat. § 462.3585.](#)

VI. Joint or multijurisdictional planning

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

A. Community-Based planning

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

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

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

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

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

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

If a city has 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.

RELEVANT LINKS:

[Minn. Stat. § 462.3585.](#)

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

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

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

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

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

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

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

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

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

[Minn. Stat. § 462.3585.](#)

[Minn. Stat. § 462.358, subd. 1a.](#)

[Minn. Stat. § 462.371.](#)
See [Handbook, Chapter 17.](#)
See [LMC Information Memo Liability Coverage for Joint Powers Agreements.](#)

[Minn. Stat. § 462.372.](#)

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.

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.

RELEVANT LINKS:

- 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.

[Minn. Stat. § 462.373, subd. 1.](#)

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

[Minn. Stat. § 462.373, subd. 2.](#)

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.

[Minn. Stat. § 462.374.](#)

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

[Minn. Stat. § 462.375.](#)

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

D. Regional development commissions and comprehensive planning activities

[Minn. Stat. § 462.383.](#)

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.

[Minn. Stat. § 462.385.](#)

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

[Northwest Development Commission.](#)

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

[Headwaters Regional Development Commission.](#)

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

[Arrowhead Regional Development Commission.](#)

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

[West Central Initiative.](#)

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

RELEVANT LINKS:

[Region Five Development Commission.](#)

[Mid-Minnesota Development Commission.](#)

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

[East Central Regional Development Commission.](#)

[Southwest Regional Development Commission.](#)

[Region Nine Development Commission.](#)

[Metropolitan Council.](#)

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

[Minn. Stat. § 462.391, subd. 1a.](#)

[LMCIT Land Use Resources.](#)

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

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

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

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

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

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

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

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

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

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

VII. Training and resources for planning commission members

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

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

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

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



HANDBOOK FOR MINNESOTA CITIES

**Chapter 14
Comprehensive Planning, Land Use
and City-Owned Land**

TABLE OF CONTENTS

- I. City land use regulation.....2
 - A. Comprehensive planning and planning commissions3
 - B. Subdivision regulations7
 - C. Zoning regulation12
- II. Enforcement of zoning and subdivision regulations19
- III. Making a record and judicial review19
- IV. Interim ordinances: Moratorium.....21
- V. Real estate acquisitions, sales, and other dispositions.....21
 - A. Vacating easements, streets, and roads.....22
 - B. Establishing streets, roads, and cartways23
 - C. Eminent domain24
- VI. The “takings” issue.....28
 - A. The general law28
- VII. How this chapter applies to home rule charter cities.....29

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



HANDBOOK FOR MINNESOTA CITIES

Chapter 14 Comprehensive Planning, Land Use and City-Owned Land

Learn about land use ordinances to establish zoning and subdivision regulations, and city land acquisition through dedication, negotiation and eminent domain. Regulations and acquisition are the two basic methods of city land use control.

RELEVANT LINKS:

[Minn. Stat. § 462.351.](#)

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

I. City land use regulation

Cities are granted the authority to regulate land use by the Municipal Planning Act. Cities outside the seven-county metro area are not required to regulate land use. For those cities engaged in land use regulation, the Municipal Planning Act provides the framework and road map that all cities must follow.

Cities regulate land use through three basic tools:

- The comprehensive plan.
- The zoning ordinance.
- The subdivision ordinance.

Cities are not required to adopt all three tools when engaged in municipal planning. However, it is important to note that each tool serves a separate and essential purpose.

These planning, zoning, and subdivision tools harmonize and interact in important ways to protect and promote the sound development of the city. First, the comprehensive plan helps the city look to the future, as it guides current development in administering its zoning ordinance and subdivision ordinance. The city subdivision ordinance regulates the division of land into smaller lots and the creation of blocks and neighborhoods with safe streets, appropriate environmental features, and character. Finally, the city zoning ordinance regulates the use and density of city zones for commercial, residential, and industrial purposes, both segregating and combining uses where appropriate to prevent congestion, environmental contamination, and other negative human health hazards.

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:

See LMC information memo, *Planning Commission Guide*.
Minn. Stat. § 462.351.
Minn. Stat. § 462.352, subd. 5.
See MN Plan “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.

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

A. Comprehensive planning and planning commissions

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

For many cities, creating a comprehensive plan is the first step in adopting zoning and subdivision regulations for the city. 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. A comprehensive plan also may include a:

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

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 2.](#) [Minn. Stat. § 462.352, subd. 6.](#) [Minn. Stat. § 462.357, subd. 2 \(c\).](#)

[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).

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 or subdivision ordinance also affords the city additional legal protections, if a particular ordinance provision is challenged in court. Zoning and subdivision ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its legislative 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 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 or subdivision ordinance, the ordinances should be adopted in conjunction with extensive, written finding of facts, stating the policy reasons that necessitate the ordinance's adoption.

2. Procedure for adopting a 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.

RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 2.
See LMC information memo, [Newspaper Publication in Cities](#)
See LMC information memo, [Land Use Public Hearings](#).

Minn. Stat. § 462.355, subd. 3.

See Section *I-B-2 Adopting the Comprehensive Plan*
Minn. Stat. § 462.355, subd. 3.
See LMC information memo, [Land Use Public Hearings](#)

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

Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 462.355, subd. 3.

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 10 days before the day of the hearing.

d. Vote requirements

Unless otherwise provided in a city charter, the city council may, by resolution and 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. The one exception is that if the amendment is to permit affordable housing development, a simple majority of all members—or three out of five—is sufficient to amend the comprehensive plan.

3. Procedure for amending a comprehensive plan

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

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

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

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 revision of the plan, and is not bound by planning commission recommendations.

RELEVANT LINKS:

See Section I-D-3 on *The 60-Day Rule*
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).

Model ordinance *Creating a Planning Commission*.

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

See LMC information memo, *Planning Commission Guide*.

4. The 60-Day Rule and comprehensive plan amendments

Cities generally have only 60 days to approve or deny a written request relating to zoning, including applications to amend the comprehensive plan that are not initiated by the city council or city planning commission. 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.

5. Planning commissions

Cities may provide for a planning commission by adopting an ordinance establishing the commission, its features, powers and duties. Once created, the planning commission can play an important role in city land use regulation. The planning commission is vested by state statute with the duty of preparing and maintaining the city comprehensive plan. 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.

State statutes prescribe several other mandatory duties for the city planning commission. 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 in the LMC governing and managing memo *Planning Commission Guide*.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 1\(a\), 2\(a\).](#)
See LMC information memo, *Subdivision Guide for Cities*.
See LMC information memo, *Subdivisions, plats and development agreements*.

[Minn. Stat. § 462.358, subd. 2\(a\).](#)

[Minn. Stat. § 462.358, subd. 10.](#)
[Minn. Stat. § 473.121, subd. 2.](#)
[Minn. Stat. § 473.865.](#)
[Minn. Stat. § 473.859, subd. 4.](#)

B. Subdivision regulations

1. The purpose of subdivision regulations

Cities may regulate the subdivision of land through a subdivision ordinance. Developers who seek to subdivide larger tracts of land into smaller parcels for development and/or sale must follow the city's subdivision regulations. These regulations specify the standards of the city related to size, location, grading, and improvement of:

- Lots.
- Structures.
- Public areas, trails, walkways, and parks.
- Streets and street lighting.
- Installations necessary for water, sewer, electricity, gas, and other utilities.

Subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards of the city for a safe, functional, and enjoyable community. Importantly subdivision regulations can help the city preserve and protect vital natural resources.

If a city does not adopt subdivision regulations, the city's authority to control the development of the community is limited at best. Without city subdivision regulations, developers do not have any constraint on the subdivision of land and the location of streets and utilities in their developments. In these situations, developers may be tempted to maximize their potential profits at the expense of quality. For example, they may create too many small lots for sale, develop cheaper streets that are too narrow and unsafe, or build homes on inappropriate soils where flooding or erosion may occur.

When there are problems with a completed development, there is a potential that the city will need to step in and correct issues that affect the health, safety, and welfare of residents. When a city must repair or replace streets, infrastructure, and utility lines, these costs are often passed along to homeowners through special assessments, potentially creating financial hardship for the homeowners in the subdivision.

It is important to note, however, that state law does not require cities outside the metropolitan area to adopt subdivision regulations. Metropolitan cities must adopt subdivision regulations under and in conformance with the Metropolitan Land Planning Act.

RELEVANT LINKS:

[Minn. Stat. §§ 462.351-.365.](#)
[Minn. Stat. § 462.352, subd. 14.](#)
[Minn. Stat. § 462.358, subd. 1\(a\).](#)

[Minn. Stat. § 462.358, subd. 2\(b\).](#)

See LMC information memo, [Newspaper Publication in Cities](#).
See [Handbook, Chapter 7](#).

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

[Minn. Stat. § 505.03, subd. 1.](#)

[Semler Const., Inc. v. City of Hanover](#), 667 N.W.2d 457 (Minn. Ct. App., 2003).
[Jordan Real Estate Services, Inc. v. City of Gaylord](#), No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision).
LMC Information Memo, [Taking the Mystery Out of Findings of Fact](#).

2. Procedure for adopting and amending subdivision regulations

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. Unlike with zoning regulations, cities are not required to hold a public hearing or provide published or mailed notice prior to adopting or amending their subdivision regulations.

An ordinance may be adopted and amended by a simple majority vote of the council. Cities should follow their regular publication requirements. If the subdivision regulations require dedication of buildable land for streets, sewers, parks, utilities, recreational facilities, playgrounds, trails, wetlands, or open space, the city must first have in place either: (1) a capital improvement budget and a parks and open space plan; or (2) a parks and open space plan as a component of its comprehensive plan.

In statutory cities, ordinances and ordinance amendments must be published once in the city's official newspaper. A statutory city may also choose to publish a summary of lengthy ordinances, provided that certain legal requirements are met.

3. Administering a subdivision ordinance

a. Process for review

The city subdivision ordinance must establish the process for review of applications. Generally, subdivision application approval is a two-part process. First, the landowner applies for preliminary plat approval, and subsequently, for final plat approval. Cities may also opt to consolidate these two reviews and/or provide for administrative review of plats that delineate existing parcels and minor subdivisions. However, the two-step process is the most widely used process. Each approval process has its own mandatory timeline for approval.

b. 120 Days: Timelines for preliminary plat approval

The preliminary plat approval stage establishes the nature, design, and scope of a development project. It sets the conditions or guidelines, in large part, under which final plat approval can be obtained. After a plat is preliminarily approved, changes should generally be limited to meeting requirements imposed as a condition of approval and/or to meeting legal requirements under city ordinance and state or federal law (where applicable). As a result, the "preliminary" title can be misleading—this is the most important phase of the approval process.

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 3(b).
Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn. 2008) (applies 60-Day Rule tolling only to county review of subdivisions).

Minn. Stat. § 462.358, subd. 3(b).
LMC information memo,
Land Use Public Hearings.

Minn. Stat. § 462.358, subd. 3(b).
Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).
Jordan Real Estate Services, Inc. v. City of Gaylord, No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision).

Minn. Stat. § 462.358, subd. 3(b).

Minn. Stat. § 462.358, subd. 2(b). *Collis v. City of Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976).
Middlemist v. City of Plymouth, 387 N.W.2d 190 (Minn. Ct. App, 1986).
Kottschade v. City of Rochester, 537 N.W.2d 301 (Minn. Ct. App., 1995).

A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120-day period differs from the usual 60-Day Rule. The 60 Day Rule at Minn. Stat § 15.99 by its terms does not apply to city subdivision regulations). The city should document all extensions in writing. If the city does not act on an application within 120 days, the applicant may demand a certificate of approval from the city. Following receipt of the certificate, the applicant may request final approval by the city as discussed below.

The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of notice at least 10 days before the hearing.

c. 60 Days: Timelines for final plat approval

After preliminary plat approval, state statute allows the applicant to seek final approval. The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval and conformance with city regulations and state and federal law (where applicable). Unlike preliminary plat approval, there is no required public hearing on the final plat.

Once an applicant has requested final approval, the city must approve or disapprove of the application in 60 days. If the municipality fails to act within 60 days, the final plat application may automatically be deemed approved.

4. Dedication requirements and park dedication fees

A subdivision ordinance may require a subdivision applicant to dedicate a reasonable portion of land within the development to the public to address infrastructure needs created by the development. Cities may require dedication of land to the public for numerous uses, including:

- Streets, roads, and alleys.
- Water, sewer, and similar facilities.
- Gas, electric, and similar facilities.
- Storm water drainage and hold areas or ponds.
- Parks, recreational facilities, and playgrounds.
- Trails and sidewalks.

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 2(b) (e).
Minn. Stat. § 462.358, subd. 2(c).
Collis v. City of Bloomington, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995).

Minn. Stat. § 462.358, subd. 2(c).
Collis v. City of Bloomington, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). *Kottschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995).

Minn. Stat. § 462.358, subd. 2(b)(d).

Minn. Stat. § 462.358, subd. 2(b)(c).

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

Minn. Stat. § 462.358, subd. 2(b)(c).

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

- Wetlands and wetland preservation.
- Open space.

When the city requires land to be dedicated within a specific subdivision, it must determine that:

- The city reasonably needs to acquire the specific portion of land for reasons permitted by state statute (e.g., streets, parks, utilities) as a result of approval of the subdivision (this is sometimes referred to as a nexus requirement).
- The need created by the subdivision is roughly proportional to the city's dedication requirement. For example, in a five-house subdivision, it may be reasonable to require dedication of park land for a small, local swing set park. It may not be reasonable to require the same small subdivision to dedicate multiple acres for a community park serving hundreds of city residents.
- The need for the dedicated land has not already been offset or obviated by other actions of the developer in setting aside for public use other open space, recreational, or common areas, or other facilities within the development.

In lieu of land dedication for parks, recreational facilities, playgrounds, trails, wetlands, or open space, cities may require a developer to pay “cash fees” commonly referred to as “park dedication fees” and/or “trail fees” (cumulatively referred to as park dedication fees in the rest of this memo) Park dedication fees excuse a developer from a local land dedication for park and recreational purposes, but still allow the city to purchase and acquire new, off-site facilities to serve needs created by the subdivision. When a city establishes and imposes a park dedication fee, in lieu of land dedications, it must still comply with all of the requirements discussed above for land dedications related to procedure, nexus, and proportionality.

State statute requires cities to follow a specific formula for setting park dedication fees. Cities may wish to retain the services of a land appraiser, or some other professional, to help them determine the appropriate rate for their park dedication fees.

RELEVANT LINKS:

[Minn. Stat. § 462.358, subd. 2\(a\).](#)
See LMC information memo, *Subdivision Guide for Cities*.

[Minn. Stat. § 462.358.](#)

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

5. Required public improvements and development agreements

a. Required public improvements

The city subdivision ordinance may condition approval of an application upon the construction and installation of needed public improvements for the subdivision such as:

- Drainage facilities.
- Streets.
- Electric, gas, sewer, water, and similar utilities.

The city may require that the developer install the improvements to the city's specifications as detailed in the subdivision ordinance. For example, the city may wish to specify the width and composition of any streets installed by the developer. In addition, in order to ensure that the improvements are installed correctly and completely, the city may condition approval upon both of the following conditions:

- Providing a cash deposit, certified check, irrevocable letter of credit, bond, or some other type of financial security in an amount sufficient to ensure that the required improvements will be completed as specified.
- The signing of a development agreement between the city and the developer, which may be enforced by legal and equitable remedies in a court.

Cities are not required to condition approval upon developer installation of needed improvements. Cities may also install the improvement themselves. Often these cities recoup the cost through special assessments on the newly subdivided parcels.

b. Development agreements

The subdivision ordinance may provide that the city condition approval of an application on any requirements reasonably related to the city's regulations. These requirements may be reduced to a written contract known as a development agreement. Once executed, a development agreement may be enforced by all legal and equitable remedies in a court of law.

Written development agreements are the city's most important tool to enforce the expectations of the city's subdivision regulations. State law does not dictate the contents of a development agreement.

RELEVANT LINKS:

[Minn. Stat. § 462.351.](#)
See LMC information memo, [Zoning Guide for Cities](#).
See also LMC information memo, [Zoning Decisions](#).

[Minn. Stat. § 462.357, subd. 1.](#)

[Minn. Stat. § 462.357, subd. 1.](#)

See LMC information memo, [Zoning Guide for Cities](#).
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 [Land Use Public Hearings](#).

Since a development agreement implicates important legal rights for the city, these contracts are typically drafted with the advice and assistance of the city attorney. Development agreements are usually recorded with the county after execution (signing).

C. Zoning regulation

1. The purpose of zoning regulation

Zoning allows a city to control the development of land within the community—the type of structures that are built, the density of structures, and the uses to which the land is put. Zoning seeks to segregate and combine (where appropriate) residential, commercial, and industrial uses in order to promote the best use of land for the health and welfare of the city’s residents.

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 uses, certain types of commercial uses, 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.

2. Procedure to adopt and amend a zoning ordinance

The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance. Zoning regulations can only be imposed by a local ordinance.

a. Public hearing requirements

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 in Cities*

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, Chapter 7.

See LMC information memo, *Zoning Guide for Cities*. See also LMC information memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*. See also LMC information memo, *Taking the Mystery Out of Findings of Fact*.

(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 10 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 10 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.

Following the public hearing, the planning commission (if one exists) must review the proposed zoning ordinances and any comments from the public hearing, and make any appropriate and reasonable revisions. The planning commission must then present the zoning ordinance and any amendments in final draft form and a report to the council.

If there is no planning commission, the city council itself should review and address comments from the public hearing and make any appropriate and reasonable revisions. 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.

b. Publication

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

3. Administering a zoning ordinance

a. The 60-Day Rule: Strict timelines for review

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.”

RELEVANT LINKS:

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. 3(b).
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).

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

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) The 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,” 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 documents 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 his or her 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.

RELEVANT LINKS:

[Minn. Stat. § 15.99, subd. 2\(a\).](#)

[Minn. Stat. § 15.99, subd. 2\(c\).](#)
[Hans Hagen Homes, Inc. v. City of Minnetrista](#), 728 N.W.2d 536 (Minn. 2007).
[Johnson v Cook County](#), 786 N.W.2d 291 (Minn. 2010).

[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\(g\).](#)

(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 all of the following to 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 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\(a\).](#)

See LMC information memo,
*Forms to Help Cities Comply
with the 60-Day Rule.*

Stodola v. City of Orono, No.
C2-93-2445 (Minn. Ct. App.
1994) (unpublished decision).

[Minn. Stat. § 462.3595.](#)
See LMC information memo,
*Land Use Conditional Use
Permits.*
*Upper Minnetonka Yacht
Club v. City of Shorewood*,
770 NW 2d 184 (Minn. Ct.
App. 2009).

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 or an environmental impact statement 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. Uses and conditional uses

A key feature of zoning ordinances is to divide areas of the city into districts and then list the permitted and conditional uses. Permitted uses are those that the zoning ordinance allows outright. It is generally arbitrary and unlawful to deny a permit for a permitted use unless the zoning of the property is subsequently changed to prohibit that use.

Conditional uses are those activities that the zoning ordinance permits if certain conditions set forth in the city ordinance are met. The city must grant the conditional use permit (CUP) if the applicant satisfies all the conditions. Conditional uses remain in effect indefinitely as long as the use complies with the conditions. Once issued, a CUP's conditions may not be unilaterally altered by the city, unless a violation of the CUP has occurred.

RELEVANT LINKS:

See LMC information memo, [Zoning Guide for Cities](#). See LMC information memos, [Land Use: The Neighbor Factor](#)” and [Land Use Conditional Use Permits. Trisko v. City of Waite Park](#), 566 N.W.2d 349 (Minn. Ct. App. 1997).

[Minn. Laws 2011, ch. 19, § 2](#) amending [Minn. Stat. § 462.357, subd. 6](#).

See LMC information memo [Zoning Guide for Cities](#) for more information on variances. See LMC information memo [Land Use Variances](#).

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. Neighborhood opposition alone to a CUP does not authorize the rejection of an application for a CUP.

c. Variances

Variances have been the subject of dramatic litigation for the past couple years, giving cities good reason to worry about granting them. However, thanks to legislation passed in 2011, the ability of cities to safely grant variances has been restored.

A variance is a way that a city may allow an exception to part of a zoning ordinance. It is permission from the city for a departure from strict enforcement of the ordinance as applied to a particular piece of property. A variance is generally for a dimensional standard (such as setbacks or height limits), but may not be used to allow a use that is prohibited in the particular zoning district. Essentially, a variance allows the landowner to break a dimensional zoning rule 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.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner “practical difficulties.” Whether the applicant would be caused practical difficulties is determined by the statutory three-factor test for practical difficulties. If the applicant does not meet all three factors of the statutory test, then a variance should not be granted. Also, variances are only 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 test—which is similar to the previous statutory test for “undue hardship”—consists of the following three criteria.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 1e.](#)
See LMC information memo [Zoning Guide for Cities](#) for more information on nonconformities.
See LMC information memo [Land Use Nonconformities](#).

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

[Ortell v. City of Nowthen](#), 814 NW 2d 40 (Minn. Ct. App. 2012).

- The property owner proposes to use the property in a reasonable manner, but one which is not allowed by the city’s zoning ordinance.
- The landowner’s situation is due to circumstances unique to the property not caused by the landowner. Uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone “do not constitute 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.

If a variance applicant can demonstrate the practical difficulties test is met, that the variance would be in harmony with the general purposes and intent of the zoning ordinance, and that the variance is consistent with the comprehensive plan, the city may grant the variance.

d. Legal nonconformities predating the adoption of the zoning ordinance

Legal nonconformities are those uses, structures, or lots that legally existed prior to the creation of a zoning district or adoption of a specific zoning regulation 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. 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 one of the following is true:

- 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 market value, 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.

RELEVANT LINKS:

[Minn. Stat. § 462.357, subd. 1e\(c\),\(d\)-\(j\).](#)

See LMC information memos, [Zoning Guide for Cities](#) and [Subdivision Guide for Cities](#).
[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.](#)

[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).

[State v. Dorn](#), No. C6-98-2001 (Minn. Ct. App. Mar. 23, 1999)(unpublished decision).

[Swanson v. City of Bloomington](#), 421 N.W.2d 307 (Minn. 1988).
See LMC information memos and materials: [Taking the Mystery Out of Findings of Fact](#); [Sample Findings of Fact](#); [City of Burnsville](#).

Nonconforming shoreland lots have additional protections under state law. In addition, cities can 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.

II. Enforcement of zoning and subdivision regulations

Cities may provide for criminal penalties for violation of a land use 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.

In many instances, criminal sanctions will not cure a land use violation. Where the city desires removal of a building or use that violates the zoning or subdivision 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 land use ordinances.

A land use ordinance may provide that each day the violation exists constitutes a separate offense. Multiple citations are consistent with public policy because it would be unjust to allow individuals to pay the fine for the original charge and finish a building project without abiding by the appropriate codes and ordinances.

III. Making a record and judicial review

To avoid or minimize the costly expenses of litigation related to land use activities and land use applications, cities should always keep an accurate record of meetings, including any evidence presented; make findings of fact contemporaneously with any actions taken; and provide an opportunity for interested parties to speak. It is recommended that cities base findings of fact on the record and discuss the legal standards imposed by the city's ordinances.

RELEVANT LINKS:

Pelican Lake Prop. Owners Ass'n v. County of Crow Wing, No. C5-98-1549 (Minn. Ct. App. Aug. 17, 1999)(unpublished decision). See LMC information memos, *Land Use Claims: Ten Tips. Zoning Decisions. Land Use Defense Coverage.*

SuperAmerica Group, Inc. v. City of Little Canada, 539 N.W.2d 264 (Minn. Ct. App. 1995).
Trisko v. City of Waite Park, 566 N.W.2d 349 (Minn. Ct. App. 1997).
See LMC information memo, *Land Use Claims: Ten Tips.*

Minn. Stat. § 462.361.
Stansell v. City of Northfield, 618 N.W.2d 814 (Minn. Ct. App. 2000).

Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs, 633 N.W.2d 59 (Minn. Ct. App. 2001).
BECA of Alexandria LLP v. County of Douglas ex rel Bd. of Comm'rs, 607 N.W.2d 459 (Minn. Ct. App. 2000).
In re Livingood, 594 N.W.2d 889 (Minn. 1999).

Hurrle v. County of Sherburne, 594 N.W.2d 246, (Minn. Ct. App. 1999).
Minn. Stat. § 15.99.
R.A. Putnam & Assocs. v. City of Mendota Heights, 510 N.W.2d 264 (Minn. Ct. App. 1994).
C.R. Invs., Inc. v. Village of Shoreview, 304 N.W.2d 320 (Minn. 1981).
Honn v. City of Coon Rapids, 313 N.W.2d 409 (Minn. 1981) (holding limited by *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988)).
Zylka v. City of Crystal, 283 Minn. 192, 167 N.W.2d 45 (1969).

A city that does not follow the procedures in its own land use ordinances or fails to document the basis for decisions risks having its decisions reversed by a court.

Councils should avoid making a decision on a land use issue based on citizen opposition alone. A decision-making body cannot use vague and speculative opinions and unsubstantiated concerns from citizens as the basis for a decision. However, expert testimony supporting the citizens' point of view may not be necessary if there is a factual basis for the opposition.

District court review of a city's land use decisions is available, but an exhaustion of the remedies provided by ordinance is first required. A person suing to challenge a city's land use decision must allege specific injuries as to how the action adversely affects the person's property rights or personal interests.

The general standard for review in all land use decisions is whether the council's action was reasonable and rationally based. If the city neglects to state reasons for an action taken on the record, the city's action may be presumed to be arbitrary and unreasonable. Similarly, if the record contains no findings by the council, the burden of proof shifts to the city to show its actions were reasonable.

Denials and findings of fact made within a reasonable time of a decision are sufficient. For example, in complex matters a council may ask the city attorney to draft findings of fact for the council to adopt at a subsequent council meeting when a council denies a land use application. Findings must be legally sufficient and factually supported.

Note: It is of the utmost importance that the city issue denials and adopt findings within the 60-day time limit as required by state law.

RELEVANT LINKS:

Kreuz v. St. Louis County Planning & Zoning Comm'n, No. C8-96-150 (Minn. Ct. App. 1996)(unpublished decision).

Minn. Stat. § 462.355, subd. 4.

See LMC information memos, *Zoning Guide for Cities* or *Subdivision Guide for Cities*.

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

Minn. Stat. § 412.211.
See LMC information memo *Purchase and Sale of Real Property*.

Minn. Stat. § 412.211.

Minn. Stat. § 465.035.

When explicit written findings are made—as to the basis and reasons for a decision—the courts respect the broad discretion cities have to make routine municipal decisions and will likely determine the decision is not arbitrary and capricious.

IV. Interim ordinances: Moratorium

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in adopting and amending their land use ordinances, 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, which include the adoption of an ordinance and conduct of a study.

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

V. Real estate acquisitions, sales, and other dispositions

Statutory cities are authorized to acquire real property within or outside their corporate limits by purchase, gift, devise, condemnation, lease, dedication, or otherwise. The law permitting the conveyance of tax-forfeited land to a city may also be used to acquire land.

Statutory cities are free to hold, manage, control, sell, convey, lease, or otherwise dispose of real and personal property as required by the city's interest.

With the council's authorization, no consideration is required when a city conveys land for the public use to another public corporation, any governmental subdivision, or the Minnesota Armory Building Commission.

RELEVANT LINKS:

[A.G. Op. 469-A-15 \(May 15, 1967\).](#)

[Minn. Stat. § 462.356, subd. 2.](#)

[Minn. Stat. § 412.221, subd. 2.](#)

[Minn. Stat. § 462.358, subd. 7.](#) [Minn. Stat. § 412.851.](#)
[LMC information memo,](#)
[Vacation of City Streets.](#)

[Minn. Stat. § 412.851.](#)

[Minn. Stat. § 462.358, subd. 7.](#)

[Minn. Stat. § 412.851.](#)

[Minn. Stat. § 164.07, subd.2.](#)

Generally, a city council can decide to buy or sell property without seeking permission. The statutes do not require the council to submit the question to voters unless bonds are issued to purchase property. If a city has a comprehensive plan however, it must usually notify the planning commission of the intent to purchase or sell land, and allow 45 days for comment from the planning commission.

A. Vacating easements, streets, and roads

1. Vacation by cities

When it is in the public interest to do so, cities may abandon ownership or control over all or any part of land set aside, dedicated, or used as streets or alleys. State law sets the exclusive process for a statutory city to abandon a street, road, alley, or public way.

In statutory cities, the resolution ordering the vacation must pass by a four-fifths vote of all the members of the council. (This means there must be four affirmative votes on a five member council.)

A statutory city may also vacate any publicly-owned utility easement or boulevard reserve in the same way streets or alleys are vacated by the type of city involved.

The steps for a statutory city to vacate a street or alley are as follows:

- The council may initiate the action by resolution, or a majority of property owners who abut the land to be vacated may petition for this action. Such petitions probably need signatures from a majority of landowners and from the owners of at least 50 percent of the land area.
- The council must hold a public hearing on the proposal, following two weeks published and posted notice. The city must provide written notice to each affected property owner at least 10 days before the hearing.
- If the road to be vacated abuts or terminates on, or is adjacent to any public water, the city must send written notice of the petition or resolution to vacate to the commissioner of Natural Resources, by certified mail, 60 days before the date of the public hearing. In addition, the council or its designee must meet with the commissioner of Natural Resources at least 15 days before the public hearing. The commissioner will evaluate the proposed vacation according to state law, and will advise the council as to that evaluation.

RELEVANT LINKS:

A.G. Op. 59-A-53 (Jan. 13, 1977).
Minn. Stat. § 160.29.

In re Hull, 163 Minn. 439,
204 N.W. 534 (1925).

Minn. Stat. § 505.14.
In re Verbick, 607 N.W.2d
148 (Minn. Ct. App. 2000).
LMC Information Memo,
Vacation of City Streets.

See LMC information memo
*Acquisition and Maintenance
of City Streets*.
*Bengtson v. Village of Marine
on St. Croix*, 246 N.W.2d 582
(Minn 1976). *In re
Maintenance of Road Areas
Shown on Plat of Suburban
Estates*, 250 N.W.2d 827
(Minn., 1977). A.G. Op. 377-
A-4 (August 31, 1959)
A.G. Op. 396-G-4 (Sept 10,
1957)
A.G. Op. 377-A-4 (June 17,
1957).
A.G. Op. 396-G (July 28,
1955)
A.G. Op. 396-G-1 (August
22, 1949)
A.G. Op. 396-G-7, (June 19,
1946)

When a city lawfully vacates a street, the owner of the abutting property holds title to the land in the former street (presumably to the centerline) free of easements either in favor of the public or owners of other property abutting on the street. Cities may specify the extent to which a proposed vacation affects existing utility easements, including the right to maintain and continue utility easements.

An abutting property owner who suffers “peculiar damages” (lack of access) from the vacation of the street may be entitled to compensation. However, a property owner probably will not prevail on a claim for money against a city if the only complaint is that the person must travel further or over a poorer road due to a street vacation.

2. Vacation by courts

For streets in private and in certain platted territories, there is also a district court procedure for vacation. The street may be vacated only if it is useless for its original purpose. The courts broadly construe the terms “useless” and “purpose.” Merely showing the street is not presently used is insufficient to show uselessness. Before a court may grant an application, the mayor of the city must receive personal notification of the application at least 10 days before the court intends to hear the application. If the road to be vacated abuts or terminates on, or is adjacent to any public water, the commissioner of Natural Resources must be notified well in advance and has a right to intervene in the court proceedings.

B. Establishing streets, roads, and cartways

1. City streets and roads

The decision to acquire, construct, and open a city street is vested solely with the city council. With the exception of a newer law related to cartways for inaccessible properties discussed below, in statutory cities there is no method, via petition or otherwise, by which a citizen or group of citizens can directly compel a city to acquire or construct a street.

RELEVANT LINKS:

See LMC information memo, [Acquisition and Maintenance of City Streets](#).

[Minn. Stat. § 435.37](#). [Minn. Stat. § 164.07](#).

[Minn. Stat. § 465.01](#).
[Minn. Stat. § 117.012](#).
[Minn. Stat. ch. 117](#).

The decision to acquire or construct a street is a legislative decision of the city council. This means that as long as the city’s reasoning is neither arbitrary, capricious, nor based upon an erroneous reading of the law, the courts will not overrule the city’s decision on the issue. The city alone may choose the best time to open, occupy, and use city streets.

Mere notation of a street on an accepted and recorded plat will not require the city to open a street. Instead, the plat simply reserves the dedicated land for future use.

Cities may acquire land for streets in a variety of ways including outright purchase through negotiation, dedication (on a plat or otherwise), eminent domain, and other statutory processes.

2. Cartways

Cities must establish a road in certain situations. A property owner who has limited access to their land may petition the city council to connect the land to a public road. If the petition fits the following criteria, the city council must establish a cartway (a road or driveway) connecting the petitioner’s land to a public road:

- The tract of land is five acres or more.
- The owner has no access except over a navigable waterway or over the land of others.
- The current access is less than two rods in width.

The city council may select an alternative route to the one proposed by the applicant for the cartway in some situations. Generally, the petitioner must pay all costs associated with establishing and maintaining the cartway, including paying any “damages” to adjacent landowners whose property will be used for the new cartway.

C. Eminent domain

1. Background

All cities have the authority to take (or condemn) private property for public use as long as they pay the landowner reasonable compensation. Essentially, this is a way to require that an owner sell his or her land to a city. This procedure requires a formal court action, and a city must pay an owner for the value of the land or the damages to the land - if the city is taking only part of the private property, such as for an easement.

RELEVANT LINKS:

Kelo et al v. City of New London, et al., 545 U.S. 469, 125 S. Ct. 2655 (2005).

Minn. Stat. ch. 117.

See also, *Regents of the Univ. of Minn. v. Chicago & N.W. Transp. Co.*, 552 N.W.2d 578 (Minn. Ct. App. 1996).

Minn. Stat. § 117.025, subd. 6.

Minn. Stat. § 117.025, subd. 7.

In the 2005 case, *Kelo v. City of New London, Conn.*, the United States Supreme Court held that taking property for economic development is a valid public purpose and that if a city seeks to exercise its power of eminent domain for economic development purposes, it should do so in conjunction with a well thought out economic development plan.

a. Public use and public purpose

In response to the *Kelo* decision, the 2006 Minnesota Legislature passed extensive legislation restricting a city's power of eminent domain and increasing compensation to owners.

The law preempts all other condemnation procedures for charter and statutory cities (except for drainage, town roads and watershed districts). It narrows the definition of "public use" and "public purpose" to:

- The possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies.
- The creation or functioning of a public service corporation (for example, a municipal or private utility).
- The mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of public nuisances.

In contrast, the public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

Cities may still use condemnation to alleviate a blighted area; however "blighted area" is now more narrowly defined as an area in urban use where half of the buildings are structurally substandard.

To be considered "structurally substandard," a building must meet all of the following criteria:

- The building has been inspected and cited for enforceable housing, maintenance, or building code violations.
- The building code violations involve specific structural aspects of the building (e.g., roof, support walls and beams, foundation, internal utilities).
- The cited violations have not been remedied after two notices to cure noncompliance.
- The cost to cure the violations is more than 50 percent of the estimated market value for the building (excluding land value).

RELEVANT LINKS:

[Minn. Stat. § 117.027, subds. 1, 2.](#)

[Minn. Stat. § 117.025.](#)

[Minn. Stat. § 117.041, subd. 3.](#)

[Minn. Stat. § 117.0412.](#)

The law gives local government the authority to seek an administrative search warrant to enter and inspect a building if there is a reasonable suspicion that all of the following are true:

- The property violates a specific section of a housing maintenance or building code.
- The violation is ongoing.
- The owner denies the local government access to the property.
- Cities may use recent fire or police inspections, housing inspections, and exterior indications of deterioration as evidence to support their suspicions that a building is structurally substandard.

The law prohibits taking non-structurally substandard buildings and uncontaminated parcels unless there is no other reasonable way to remedy blight or contamination in the area—and all possible steps are taken to minimize the taking of such buildings or lands.

The law also specifically defines other terms (owner, environmentally contaminated areas, abandoned property and public nuisance). Additional resources are available on these legal terms as well as the legal standards a city must meet when condemning private property.

To establish findings related to blight and contamination, the city may need to conduct geotechnical investigation. State statute permits a city to enter private property prior to commencing eminent domain proceedings in order to investigate, survey, and test the site and subsurface conditions. Prior to this entry, the city must provide the landowner at least 10 days advance notice. If the landowner refuses entry, the city must obtain a court order to enter the property.

b. Procedural changes

All land acquisitions must follow the process the state uses to take land for transportation purposes—and the law also modifies those processes, including but not limited to:

- Requiring exchange of appraisals.
- Requiring timely exchange of specific documents between the parties.

The law includes a requirement for a public hearing before a city can condemn property to mitigate a blighted area, remediate an environmentally contaminated area, reduce abandoned property, or remove a public nuisance. In concert with the hearing requirements are notice requirements. The law requires that cities make specific findings as to public costs, if any, and public purposes during the process.

RELEVANT LINKS:

[Minn. Stat. § 117.226.](#)

[In re Wren](#), 699 N.W.2d 758 (Minn. 2005) distinguished by [Instant Testing Co. v. Community Security Bank](#), 715 N.W.2d 124 (Minn. Ct. App. 2006).

[42 U.S.C.A. §§ 4601-4655.](#)

[Minn. Stat. § 117.52, subd. 1\(a\).](#)

[2012 Minn. Laws Ch. 184](#) amending [Minn. Stat. § 117.52, subd. 4.](#)

[Minn. Stat. § 117.031.](#)

[Minn. Stat. § 117.186.](#)

If a city determines that property acquired through eminent domain is no longer needed for a public purpose, the city must offer to sell the property back to the person it was acquired from at the original price or the current fair market value, whichever is lowest. (The Minnesota Department of Transportation is exempt from this “right of first refusal” requirement.)

c. Relocation costs

Both state and federal law protect property owners and tenants who are required to move because of eminent domain proceedings; cities, or condemning authorities, must pay relocation costs for the people who must move. In some limited circumstances, owner-occupants may waive relocation benefits.

If a city receives federal funding for a project that involves the use of eminent domain, federal law requires that the city pay certain benefits to people who must move from their homes, farms, or businesses as a result of the project.

Minnesota law also requires payment of relocation benefits when eminent domain is used, even if no federal funding is involved. The nature and amount of these benefits is the same as if federal funds were involved. The maximum that a city must pay to a relocated business is \$50,000 of eligible expenses.

If a person must relocate but does not accept the city’s determination of the amount of relocation assistance or the city’s denial of relocation assistance eligibility, the state law now requires that a city must seek resolution using state contested case procedures and an administrative law judge.

d. Court and compensation costs

If a person challenges a city’s condemnation proceeding or amount in court, and prevails, the court may – and in some situations must – award the person’s court costs and attorney’s fees.

State law contains numerous provisions relating to compensation for losses, including but not limited to:

- Going concern compensation.
- Minimum compensation.
- Acceptance of replacement properties.
- Loss of a nonconforming use.
- Loss of driveway access.

RELEVANT LINKS:

[U. S. Const. Amend. V.
Minn. Const. art. I § 13.](#)

[Lucas v. South Carolina
Coastal Council, 505 U.S.
1003, 112 S. Ct. 2886 \(1992\).](#)

[Lucas v. South Carolina
Coastal Council, 505 U.S.
1003, 112 S. Ct. 2886 \(1992\).](#)

[Penn Cent. Transp. Co. v.
City of New York, 438 U.S.
104, 98 S. Ct. 2646 \(1978\).
Wensmann Realty, Inc. v. City
of Eagan, 734 N.W.2d 623
\(Minn. 2007\).](#)

[McShane v. City of Faribault,
292 N.W.2d 253 \(Minn.
1980\). DeCook v. Rochester
Intl. Airport Joint Zoning
Board, 796 N.W.2d 299
\(Minn. 2011\). Olsen v. City of
Ironton, No. C599945 \(Minn.
Ct. App. Apr. 17, 2001\)
\(unpublished decision\).](#)

[Alevizos v. Metropolitan
Airports Comm'n, 298 Minn.
471, 216 N.W.2d 651 \(1974\).
Grossman Invs. v. State by
Humphrey, 571 N.W.2d 47
\(Minn. Ct. App. 1997\).
Minn. Stat. ch. 117.](#)

The use of eminent domain is controversial and complex. A city council considering the use of eminent domain should consult with the city attorney well before using this tool for land acquisition.

VI. The “takings” issue

A. The general law

Both the U.S. Constitution and the Minnesota Constitution forbid the taking of private property for public use without just compensation. Traditional “takings” prevent the government from physically occupying private property without just compensation. The U.S. Supreme Court has also decided that government regulation (without physical occupation) of a property may, in some circumstances, also give rise to a claim that a taking has occurred. Zoning and land use regulations on property may be considered takings if the regulation goes too far.

In determining whether a regulation goes too far, the United States Supreme Court has recognized two distinct classes of regulatory takings:

- Categorical takings, in which the regulation denies all economically beneficial or productive use of land.
- Case-specific regulatory takings, which involve consideration of the economic impact of the regulation, the interference with reasonable investment-backed expectations, and the character of the regulation.

The Minnesota Supreme Court has recognized a third class of takings that may occur when the government adopts a land use regulation designed to benefit a specific public or governmental enterprise. If the regulation is enacted for the benefit of a government enterprise (airport zoning, for example), the government must compensate the landowners whose property has suffered a substantial and measurable decline in market value as a result of the regulations.

When the government has taken property without formally using its eminent domain powers, the property owner has a cause of action for inverse condemnation under the eminent domain laws.

RELEVANT LINKS:

[Northern States Power Co. v. Minnesota Metro. Council](#), 684 N.W.2d 485 (Minn. 2004).

[Johnson v. City of Minneapolis](#), 667 N.W.2d 109 (Minn. 2003).
See Part XII of this chapter for more on *eminent domain*.

[42 U.S.C. § 1983](#).

[Kottschade v. City of Rochester](#), 319 F.3d 1038 (8th Cir. 2003).

[Nordmarken v. City of Richfield](#), 641 N.W.2d 343 (Minn. Ct. App. 2002).

[Handbook, Chapter 4](#).

Inverse condemnation is an action against a governmental defendant to recover the value of property that has been taken in fact by the government defendant, even though no formal exercise of the statutory power of eminent domain has been attempted by the taking agency.

Money damages may also be available under a claim that the taking violates a person's constitutional rights.

Before bringing a takings clause claim in federal court, a property owner must first attempt to obtain just compensation through inverse condemnation procedures available in state courts.

VII. How this chapter applies to home rule charter cities

The Municipal Planning Act and the Metropolitan Land Planning Act occupy the field of the process by which municipal land use laws are finally approved or disapproved, and pre-empt the power of referendum reserved in a city's home rule charter. For the most part, Minnesota land use law governs home rule charter cities just as it does statutory cities.

Some charters contain provisions for the acquisition and disposition of real property as well as the opening and vacation of city streets. As a result, best practice suggests charter cities seek legal advice as to real property transactions and street opening and vacation.



City of East Bethel Planning Commission Agenda Information

Date: February 25, 2014

Agenda Item Number: 6.0

Agenda Item:

Planning Commission information

Requested Action:

For Discussion only

Background Information:

The Metropolitan Council has released their new population forecasts and are included in this packet.

Attachments:

Population forecasts



2040 Draft Forecasts

Released for Public Comment, February 19, 2014

Note: These are preliminary and have not been adopted by the Council.
(pt) denotes part of a city; remainder of city is in neighboring county.

ANOKA COUNTY	POPULATION		HOUSEHOLDS		EMPLOYMENT		
	2000	2010	2000	2010	2000	2010	2040
Andover	26,588	30,598	8,107	9,811	3,583	4,669	6,200
Anoka	18,076	17,142	7,262	7,060	13,489	12,840	14,600
Bethel	443	466	149	174	229	86	530
Blaine (pt)	45,014	57,186	15,926	21,077	16,757	19,668	26,600
Centerville	3,202	3,792	1,077	1,315	363	409	500
Circle Pines	4,663	4,918	1,697	2,006	2,150	790	1,450
Columbia Heights	18,520	19,496	8,033	7,926	6,397	3,484	4,640
Columbus	3,957	3,914	1,328	1,416	507	1,172	1,850
Coon Rapids	61,607	61,476	22,578	23,532	21,682	23,260	35,700
East Bethel	10,941	11,626	3,607	4,060	1,374	1,123	2,200
Fridley	27,449	27,208	11,328	11,110	26,257	21,333	29,800
Ham Lake	12,710	15,296	4,139	5,171	3,194	2,931	4,480
Hilltop	766	744	400	380	257	314	360
Lexington	2,142	2,049	819	787	634	467	700
Lino Lakes	16,791	20,216	4,857	6,174	2,671	3,313	6,000
Linwood Township	4,668	5,123	1,578	1,884	154	219	430
Nowthen	3,557	4,443	1,123	1,450	337	318	720
Oak Grove	6,903	8,031	2,200	2,744	359	741	1,010
Ramsey	18,510	23,668	5,906	8,033	4,008	4,779	7,600
Nowthen	3,557	4,443	1,123	1,450	337	318	720
Oak Grove	6,903	8,031	2,200	2,744	359	741	1,010
Ramsey	18,510	23,668	5,906	8,033	4,008	4,779	7,600
St. Francis	4,910	7,218	1,638	2,520	1,247	1,537	2,070
Spring Lake Park (pt)	6,667	6,234	2,676	2,597	4,401	2,934	3,670
Anoka County Total	298,084	330,844	106,428	121,227	110,050	106,387	151,110

EAST BETHEL CITY COUNCIL MEETING

January 8, 2014

The East Bethel City Council met on January 8, 2014 at 7:30 PM for their regular meeting at City Hall.

MEMBERS PRESENT: Bob DeRoche Ron Koller Richard Lawrence
 Heidi Moegerle Tom Ronning

ALSO PRESENT: Jack Davis, City Administrator
 Mark Vierling, City Attorney

Call to Order **The January 8 2014 City Council meeting was called to order by Mayor Lawrence at 7:30 PM.**

Adopt **Lawrence made a motion to adopt the January 8, 2014 City Council agenda with the**
Agenda **addition of the supplemental payment list. Moegerle seconded; all in favor, motion**
 carries.

Public Forum Lawrence opened the Public Forum. He explained that the Public Forum is for items that are not on the agenda. If you have an item that is on the agenda, you will have to ask the person that is presiding over that item at that time to allow you to speak. So we have John Kysylyczyn.

John Kysylyczyn, "I am with the Anoka County Record. The legal newspaper is on your agenda at a later time, so would it be more appropriate to wait until then to speak? I would ask how you want to proceed?" Lawrence, "You will probably get better input if you wait." Kysylyczyn, "Okay, then I will do that."

Lawrence, "Harley Hanson, is this about the residency issue?" Harley Hanson, of "Actually it is about Happy New Year to these guys, okay? I do have a couple questions about things that have happened in past year or so. We had a branding name started with about a year or so ago. Where did that issue go?" Lawrence, "We really haven't fully developed that. It is with the EDA and that issue is still being worked on." Moegerle, "It is kind of at the bottom of the pile where there are other higher priorities than that." Hanson, "I am looking for the money aspect of this. How much money did we put up for this?" Lawrence, "Heidi, do you have that number?" Moegerle, "I don't think we put out money out for this. Are you talking about Ady Voltedge?" Hanson, "Yes." Lawrence, "What did we spend on Ady Voltedge?" Davis, "Approximately \$48,000."

Hanson, "I am trying to build a profit and expense column. I know we had some bad Council and administrators from the years past, but, how about the EDA. How much money did we put out for that?" Moegerle, "Since when?" Davis, "Last year's budget was \$133,000." Hanson, "And what column do we put that in, expenses or profit?" Davis, "Everything is related to an expense." Hanson, "I am looking for accountability for the City. We don't have money for Booster Days as I have heard yet. And I have had to, in the last couple years, go hunt for someone to sponsor it, which shouldn't happen."

Hanson, "And then the parks thing that was involved. I think I read that we have 300 acres to mow a week?" Davis, "That includes also public right-of-ways (ROW) on streets. Parks is about 1/2 of that." Hanson, "Okay, because I cut a little grass myself and I think we have

16 parks and I wondering if there is a legitimate answer for that. Because in our times that we can't do some things and we are having a little problem with money." Lawrence, "Some of the parks are being let to go back to more of a natural type of system because they are not being used. And we are tracking how much they are being used by how much trash is being left at the park. If we dump it once a year, it just isn't being used. So, those are being allowed to divert back to natural. Heidi, do you have more on that?" Hanson, "You can see where I am going with the 300 acres a week to cut. I was a farm boy; I know what 300 acres is to cut. I couldn't do it in a year. There is a trip to the parks to do. And, I am trying to put it in a profit and expense. And I don't know how many people occupy the parks and I think some of this information should come out."

"I will move on. This one hurts me. On January 2nd, on the corner of Highway 65 and 221st we had four Anoka County dump trucks, four pickups, one motor grader, one wheel loader with a blower, one bobcat and some flagman, all to remove that little bit of snow that we complained about a year or two ago. I am uncomfortable, because I think as a City we dropped the ball because we had a petition and most of the reason for the petition was where are we going to put the snow? And you say, "That is a county problem." Well, that is my tax dollars too. We have to run this place like a little business. And, I have put in my two minutes. I would like to put this on file that I am putting a little complaint on spending and it mostly bothers me because we don't have money for Booster Days. And, I am not going to put my own money in for that."

Lawrence, "Is there any feedback?" There was none.

Lawrence, "We have Dan Butler and he wants to talk about the residency issue. You want to wait until it is on the agenda?" Mr. Butler indicated that would be acceptable.

There were no additional comments so the Public Forum was closed.

Mayor's
Residency
Determination

Lawrence, "At this time, I am going to have Heidi take over as Acting Mayor to reside over that proceeding."

Davis, "The question of the residency of Mayor Lawrence was discussed in lengthy detail at the December 18, 2013 City Council meeting. There was no resolution on this subject and the matter was tabled until January 8, 2014. At this time I would like the City Attorney to describe the process that this matter could be reconsidered should the Council choose to do so?"

Mark Vierling, City Attorney, "As a result of the actions taken at the December 18, 2013 City Council meeting, which were basically two motions on either side of the issue, both of which failed, and then a motion to table until this evening, for this matter to be before this Council the proper procedure at this time would be for either one of the Council people on the side of the prevailing issue, which is those that succeeded in the motion that failed to bring a motion to reconsider the matter if either of them wishes to do so. Once that motion is made and seconded, the motion to reconsider would be debatable and then a vote is taken. If a vote is taken and on a motion to reconsider that passes, the item to be reconsidered immediately comes on the table and then would be subject to a vote."

"So, for example, (not picking either side of the issue) last meeting Council Member Moegerle made a motion to declare the Mayor did have proper residency in the City (and I am paraphrasing) and Council Member Koller seconded, that motion failed. If there is a

motion to reconsider on that motion, it would have to be made by Council Members Ronning or DeRoche, because they technically prevailed on that issue. If they make a motion to do that and the motion passes, after debate, then the Moegerle motion would immediately come on the table for vote. The same would be true of the other motion made by Council Member DeRoche at that time, seconded by Council Member Ronning to declare a vacancy in the seat of the Mayor. That is the process we will follow for this evening. If for any reason it does not get resolved this evening then we can certainly take a look at other protocols that will have to be addressed to address the issue as we go forward.”

Moegerle, “Mr. Butler, we will hear from you before we start.”

Dan Butler of 20332 Austin Street NE, “I just want to urge the Council to bring the motions up so this issue gets resolved tonight. Whatever side it prevailed on, how the attorney laid it out to look at it tonight, I urge you to bring it up. Thank you.”

Pat Schwartswald of 4516 Fawn Lake Drive NE, “I wasn’t at the December 18th meeting. Could you clarify the two Council Members that motioned it and seconded it, when it was declared residency in the City of East Bethel?” Moegerle, “Are you asking the ones that challenged or supported residency?” Schwartswald, “The ones that supported.” Moegerle, “And your question is why?” Schwartswald, “I would like to know, does he still live in East Bethel?” Moegerle, “Um, the question is intent and contacts within the City of East Bethel. The question is currently he is not sleeping in East Bethel, he still has (I am sure he will discuss this), but on December 18 he indicated that he has a mobile home he will be living in when the weather clears and he still has a post office box in East Bethel, and those kinds of things. So we are trying to determine is that significant intent and contacts for him to be a resident due to his current circumstances.” Schwartswald, “But you do have a residency, you are living in East Bethel?” Lawrence, “East Bethel, yes.”

Koller made a motion to reconsider the motion by Council Member DeRoche to declare a vacancy of the Mayors seat. DeRoche seconded.

DeRoche, “There was a rather intense debate on December 18th. If anyone has watched the meeting, there was a lot of emotion and there was fact. Since that time I have been accused of spearheading and putting a bull’s-eye on Richard and all kinds of other things. But, as all of the Council Members know up here, if this information comes to them about whether someone up here lives here or not, it is their obligation to bring it up. And that is exactly what I did on the 18th; I didn’t accuse anybody or anything. I brought it up, are you a resident or aren’t you. And from there the conversation got pretty blown out of proportion, there was a lot of emotion, a lot of innuendoes, whatever. But, the fact of the matter is, does he live here? I have done a lot of research and looked it up and a post office box does not qualify as a resident.”

“One thing I did do is I watched the St. Francis City Council meeting from December 2, 2013. For those of you that haven’t seen that, it dealt with the same situation, only it was a Council person. He was renting a room in St. Francis, but spending all his time in Zimmerman. When that came before Council one of the first things I noticed is it wasn’t contentious, there wasn’t yelling and screaming, it was very fact based, do you live there, do you live here, what is going on here. End of the story the gentleman resigned. Because it was determined that according to Minnesota Statute and the League of Minnesota Cities that once you leave the residence in the City, County or State, that the seat is to be vacated. Now, there are four people up here that have to make this decision. To be honest with you,

it is probably the hardest thing I have done since I have been in office. Because Richard, Heidi and I all came in at the same time. And there have been a lot of issues that have gone on. My problem is I am honest and upfront. I have had more e-mails in the last three weeks than I have had in three years time. One of the first questions I am asked is, "Why were you the one to bring it up? Why didn't anyone else bring it up?" Good question and up until I received an e-mail back from Richard, I didn't know, maybe he still does."

Moegerle, "Can we get to the substance of the allegations?" DeRoche, "There are no allegations here Heidi. Just let me talk, you will have your chance." Moegerle, "This isn't about the history, this is about the facts. We are here on the issue of residency. You have gone over the history of December 18th. Can we talk about the facts of the allegations?" DeRoche, "This is the problem, you like to convolute things. There are some people here that maybe they weren't here 18th and maybe they don't have the facts." Ronning, "I personally would like to support that there is reason to have a relevant conversation to support. Because not everyone has been involved with things and hopefully this answers some of their questions about these things. Pardon me for interrupting, but, I think you should allow this." DeRoche, "Seeing how it is getting a little heated already, I will cut it short. In my mind it doesn't meet the residency."

Moegerle, "Mark, since we are talking about history, can you go over the history with regard to contacts with the City. I think that there were issues of intent and what are the other issues that we will need to consider under the law with regards to issues of residency?"

Vierling, "As I indicated last time in the memo we sent to the Council, residency is a fact driven issue. Certainly everyone understands and expects physical presence within the community in terms of living status. There are however, times and occasions where a Council Member in an elected office for a brief or interim time cannot live in the area because of something that prevents that. The law does allow an analysis if they intend to live in the community, whether or not their residency; their physical presence has been interrupted by some force beyond their means. And, what contacts do they have in the community to make it credible that they both intend to reside there and intend to return within short order. These are facts the Council has to weigh. The Council is the final arbiter of its qualifications and to determine residency relative to its members. And it is a fact driven issue that the Council needs to review."

Moegerle, "In regards to Minnesota Statute 200.03 Determination of Residence, how does that apply to this situation?" Vierling, "That deals with the voting aspects of it. The Supreme Court has already ruled on that issue in terms of it certainly is relevant in terms of determining voting qualifications in the state. They specifically called out 23 and 231 to determine that although there are some factors that the Council may want to consider in that. The legislator did not establish either of those statutes as authority to determine residency of an elected official. Had they wished to do so, they would have certainly done so. They may be reviewed, but they are not determinative, nor are they binding on the issue of residency of an elected official."

Moegerle, "Because I noted that in subsection b. it says, "An individual does not lose residency if the individual leaves home to live temporarily in another state or precinct. So that would seem to apply." Vierling, "Those are voting statutes. And quite frankly, the decisions of the Supreme Court go back to early 2000's and residence of elected officials is something that probably the legislature has wanted to stay away from." Moegerle, "I can imagine. Richard, do you have any responses?"

Lawrence, “Yes, Bob mentioned why did he bring it forward. If he had done what he was supposed to be done when I gave him the information he was supposed to give it to Jack and Jack would have put it on the agenda. That is the route that we are supposed to be doing instead of just bringing it on in. That way we can clearly get all the information before we make a comment or question. But, as regards to I looked up some of the statutes from the Supreme Court and I didn’t find much that talked about residency that discussion, I couldn’t find what you had sent me on the link. I do have some paperwork for you. This statute is the statute that Heidi was referring to, or one of the ones, the other one. Are we discussing residency, or occupancy? Those are two completely separate items and I don’t see any correlation on the two. Residency comes up when people are (I can’t recall exactly and I can’t see it very well and I left my glasses in the house or maybe in the car). I have another one for you and this is the one that Heidi was referring to and the important part of this one is this is the one that Mark said is voting residency. However, it talks about being a resident; it doesn’t say whether you are a Mayor or whatever. And when we read this it talks about the intent to return. And, so far I have been Mayor for three years, and I continue to do the job as Mayor. In fact, I get calls every now and then from different people. And I respond to their needs. In fact, I have one for you Jack. I got a call about why we are plowing a dead end road with no houses on it; I will talk to you Jack about it later. So doing the job of Mayor is something we are continuing on. It is something the City is not losing any aspect of the requirements, the meetings are attended, and these are things that are required of the Mayor and being done.”

“One more final handout I have is the license application change. I was told I have to get that taken care of which I did. It states I am a resident of the City of East Bethel. Therefore there are some of the issues that were brought up were, a Mayor that is not in the City, when is he going to return or is he going to return. As any elected official, that would be the question. Facts are I am not really gone. I am out of the City, but if Jack calls I can be here in 15 to 20 minutes tops (if I can get away from work). I do work, but those are issues we work around. I am doing the job required of Mayor. With that in mind, I don’t know how much more you need for residency of someone that is willing to do the job and also doing the job as required of the Mayor. I never stopped doing the job. The fact that I have established residency, I have changed my driver’s license, it would be illegal to do that if I didn’t live there. You can’t dispute that. Some of the issues I have brought forward, all fact based from the City. Oh, there is one more. I got a message from Burt Black, Minnesota Secretary of State’s Office and I told him my questions and I told him my questions. He said they would not get involved in that question, but he did cite the exact same statutes that we have listed as far as residency proof. And since part of the proof of residency is intent to return, I have established that and part of residency is being able to do the job and I have established that.”

Moegerle, “I have some questions on these documents you have provided. We talked about 200.31b which is an individual does not lose residence if they leave temporarily. Have you ever intended to make your home anywhere else other than East Bethel?” Lawrence, “No, you are stuck with me.” Moegerle, “Sub. f. says Except as Otherwise Provided. An individual is located in the precinct where the individual’s family lives, unless the individual’s family lives in a precinct only temporarily. Where are you living and is that permanent or temporary?” Lawrence, “It is temporary.” Moegerle, “How long is temporary?” DeRoche, “This is kind of like a trial.” Lawrence, “If we were discussing this two months from now, we wouldn’t be discussing anything because I would be living in the City. That is why we need to take care of it now.” Moegerle, “It says in h. The residence of

a single individual is in the precinct where a single individual lives and usually sleeps. That sort of counteracts what you are saying. However, i. says, The mere intention to acquire a new residence is not sufficient unless the individual moves to that location. Moving to a new location is not sufficient to acquire a new residence unless the individual intends to remain there. So we get back to the intention again. And then you have given us this document, (which I have seen for the first time today) from Mr. Black. It says that if a person moves temporarily from a location from which they will return at a definite time, retains their residence for voting purposes at the prior address from which they are temporarily absent. The temporary address at another location does not confer residency if such a definite term is contemplated.”

DeRoche, “For the record, Richard you made the comment that when I received the e-mail that I should have e-mailed it to Jack so I could get it put on the agenda. And, that is exactly what happened. I was told you were going to address this at the beginning of the last meeting, when the agenda was going to be adopted. And we had the Pledge of Allegiance, and then when the Agenda was going to be adopted I said, “No we need to address this because this question has to be on here.” So if you are going to be stating things, state facts.” Lawrence, “I did state fact; it was supposed to be on the agenda. I talked to Jack; it was supposed to be on the beginning of the agenda, first thing.” Moegerle, “Do you want to respond Jack?” Jack Davis, City Administrator, “Richard and I had a conversation. This came out after the agenda had already been sent out. And I recommended that he add this as an agenda item and get out in front of this issue. It was too late to get it on the last agenda, but it was recommended that it be added to the agenda that is why it wasn’t included in the packet.”

DeRoche, “Next question I have is this license change is date December 31st. Part of the problem I have is it is kind of a deception thing. That is the problem here when facts are coming out, people get upset and at the last meeting, this hadn’t been done?” Lawrence, “It is done now and it is legal, correct? Sharon, has your license been changed?” Sharon Lawrence, “Yes.” Lawrence, “Have you received it?” Sharon Lawrence, “I haven’t gone over there to pick it up yet.” Lawrence, “She has already put hers in and is waiting to get it back.” DeRoche, “That wasn’t my question. Back last February, you knew your residence may change.” Lawrence, “No.” DeRoche, “Someone sent it to me that it was posted in the Anoka County Union that there was a sheriff’s sale on your home, it was in there twice.” Lawrence, “Right that does not mean you are losing your home.” DeRoche, “Absolutely. It does mean the possibility was there. My question to you even after the e-mail was, why all this time and until I brought the question up, and I am the bad guy. When we find something out, we are supposed to bring it up. Because I am doing what I am supposed to do. No one had made any accusations. My question was why didn’t this come forward sooner and now that I brought it forward, I put a bulls-eye on you. And, I was told you were a snowbird, yes there are people that live in East Bethel and they travel out of state and they are snowbirds, but they don’t hold public office. I told people why didn’t this come forward sooner. There are people that live here and travel out of state but they don’t hold office. When did you intend on telling people that you were living in Isanti, if ever.”

Lawrence, “Jack and I had just discussed it. I looked for it to be on the agenda, it wasn’t on the first part, but, Jack and I had gone over it. The attorney had gone over it with Jack. And it was being brought up.” DeRoche, “In December Richard.” Lawrence, “What did I do before that?” DeRoche, “I have no idea Richard.” Lawrence, “I was in the hospital with heart surgery.” DeRoche, “Everything has been put that this happened after your heart surgery. I don’t agree with that and I am not going to go into your personal life. But

somebody must have because it was in the paper and they didn't get that from me. There are four people up here that are going to decide this. In my mind I would have resigned. If I didn't live here, I would have resigned." Lawrence, "I do live here Bob, I have a residence."

Moegerle, "Here is the question I have, I understand your point, it is occupancy and where is he sleeping. We have heard time and again from our attorney that there is intent to return. What we have is he has the trailer over at Joyce's as Sharon stated. And, as Mr. Koller stated at the last meeting, he has a friend, that has lived in a trailer for ten years and that is his residence. If that is his intention and it has always been to be an East Bethel resident, then what is there to disclose since intent is such a large portion of determining residency?" DeRoche, "Are you asking me that question?" Moegerle, "Yes, I am." DeRoche, "To me having an RV in a park doesn't necessarily mean that is where you intend to live. What it means is I may go there and stay a couple weekends." Moegerle, "So you are saying when he says I will be living there that is not believable and trustworthy?" DeRoche, "What he said if you go back to the minutes was he was going to live where he is until March and then stay in the RV Park until October. It doesn't open until May. And, let's get back to intent, it is in the minutes and in the e-mail that when I asked about his residency he said, "I have looked around and I can't find anything under \$2,000 a month and I am not going to pay that. Out of curiosity, I along with some other people went on Craigslist and for rent in East Bethel a beautiful three bedroom home, big shop, \$1,350 a month. Along with two other ones. And if you go out you will still find it. In my mind, when someone says I am not a resident and I am not looking around, to me that says they are not coming here. Moegerle, "At some point he had to move out of his house. Were those houses on Craigslist listed back when he was moving now, were they listed back then? Because I don't know what that date is when he had to be out, I don't know if we even know that date."

Ronning, "One thing that didn't come out as far as intent, if you had a home fire and it is not occupiable, and you intend to rebuild that is a definable intent." Vierling, "That was the example I gave." Ronning, "We had a discussion about people living in RVs and they are living in RVs. The intent piece got a little too much attention. What we are directed to do is look at what the law says. It says doesn't say intent, it says inhabit. It doesn't say residence, it says inhabit only." Moegerle, "Where are you looking at?" Ronning, "The 2013 Minnesota Statutes 351.02 the incumbent's ceasing to be an inhabitant of the state, or, if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged. I was curious to see what the history of this was. And to my knowledge this law was enacted April 18, 1905, to be effective March 1, 1906. And the requirement was, him ceasing to be an inhabitant of the state, or if the office is local, of the district, county or city for which the incumbent was elected or appointed, or within which the duties of the office are required to be discharged. That is the eligibility. It was also in 1927 legislature, also in the 1940 or 1947, 1971, 1973, 1986, the only change throughout that time was the gender portion was removed. And the defining factor is going to be inhabitant. I agree with Bob, this is not easy. Richard, and Bob and Heidi came in here to try and fix things and things were damaged too much before they go here."

Ronning, "But, the fact remains, if this question had not came up at the last meeting, none of this would have been talked about now. I asked Richard, would you have brought this forward?" Lawrence, "Yes, I would have brought this forward." Ronning, "How many months didn't you? Your surgery was September 5th." Lawrence, "Recovery is three months." Ronning, "I know after surgery you can pick up the phone and dial? If you are claiming disability, what is the disability? You were at the meeting in October, the first

meeting and the second meeting and the one after that, correct?" Lawrence, "I don't know, I would have to look." Ronning, "These guys came in to do a good job. I don't personally think Richard has a nasty bone in his body. I do think that we don't have the freedom to look at options. I do think the legislature enacted a particular condition that it is an inhabitant. If we change that, we are changing the law and none of us have that authority."

Moegerle, "I have a follow-up, Bob brought this up at the last meeting, the issue of precedent. This is the analogy of the snowbird. We have an appointed resident that is a snowbird, currently in Florida. When he applied for his position, he indicated he was a snowbird, would always be gone from December to May. He is not sleeping here, he is not occupying East Bethel. So, how does what you are proposing apply to Richard, apply to his position? Because he is not occupying, he has an intent to return." Ronning, "Is he an elected person?" Moegerle, "He is an appointed person." Ronning, "The answer is no. The law deals with elected persons inhabiting." Moegerle, "But why would there be a difference for an appointed person?" Ronning, "You will have to find it in the law." Moegerle, "We already know the law is vague." Ronning, "It is not vague, there is nothing vague about it." Lawrence, "The law also talks about inhabitants and residents. Mr. Vierling talks about a house fire and intent to return. It is kind of an embellishment on his part to be stating that would be the only reason why you would do that. The law just says what intent to return is, it isn't any reason why you left."

Moegerle, "Mr. Butler has been very patient." Dan Butler, "I showed this Affidavit of Publication of Postponement of Foreclosure to the City Attorney, Mark Vierling. It is a record that I pulled from the Anoka County Records. I ask that the City Attorney verify that this would be the format that they would reproduce that for someone." Vierling, "Yes." Butler, "And what it states is on January 16, 2013. Basically it states that you and Sharon were willing to, well, will you read it Mr. Vierling?" Vierling, "The document I have been handed is a Affidavit of Postponement of Foreclosure, self-drafted by Sharon Lawrence, notarized by Melissa Tomes. Paragraph 3, which refers back to the owners, Mr. and Mrs. Lawrence and that they have elected to shorten any redemption period from any foreclosure sale of the property into five weeks in exchange for the postponement of the foreclosure sale for five months. It is signed by Richard and Sharon Lawrence on January 16, 2013."

Butler, "So, I know that intent is part of this conversation, versus where you actually live. But, if you intended to resign in the City of East Bethel, you had from January 16, 2013 to whenever in order to secure that residence in East Bethel. I, like Bob, went on Craigslist and found a reasonable place in East Bethel for \$750, one bedroom, one bathroom is available as of January 6th. The intent part of this is open to conjecture by everybody. And if you want to review that document, you can certainly go to the county courthouse and get it."

Lawrence, "Can you tell me when the sheriff's sale actually happened?" Butler, "Can you? Tell me." Lawrence, "I am not sure?" Butler, "August 30th." Lawrence, "And why was that so long from January to August?" Butler, "I have no idea, you would have to talk to the bank." Lawrence, "Because the bank kept saying, let's do that, let's do this." Butler, "I am not here to discuss that." Lawrence, "You are making a statement saying that it's a done deal back in January when it is not true." Butler, "I didn't sign that document Richard, you did. I don't know if that is your signature or not." Lawrence, "You are not listening to what I said, if the actual foreclosure wasn't until when? August 30th, that is a long time from August to January. You made the perception that it was done in January."

Butler, "You knew the foreclosure was coming down the road based on what you signed on

January 16th.” Lawrence, “No.” Butler, “If you did, you didn’t.” Lawrence, “The bank kept saying they were going to resolve the issue.” Butler, “But you asked for a five week extension on a shortened redemption?” Lawrence, “Well, if you have never been through the process you probably wouldn’t understand it.” Butler, “I understand a lot, I am a business man, I am a homeowner in East Bethel. I have lived here for over 18 years.” Lawrence, “Have you been through foreclosure?” Butler, “I have not.” Lawrence, “Well then you wouldn’t understand. Because they keep saying, let’s do this and let’s do that. And they never do it. They say they are doing it and you get a date all set up and they never show up. They turn around and say, “No, we have changed our mind.”

Butler, “The contingency on your intent was to not reside here? Or to reside here?” Lawrence, “I reside here. I have residency. You may not appreciate or like where I live but that is not a requirement to be Mayor, to like where I live.” Butler, “These are fact based issues that the attorney said we needed to decide on so I will leave it at that.” Moegerle, “I would like to ask a question. Has anybody got any documentation from Craigslist that there were homes available at the relevant time period?” Butler, “You can go on Craigslist right now.” Moegerle, “Not now, but when he was looking to move. I understand now there is, but what about when he was looking to move?” Butler, “If he would have established residency between the 18th of December and the 8th of January, this would be a moot point. Correct Councilor?” Moegerle, “Is it free to move, or is there a cost to move?” Butler, “If your intent is you don’t have the money and you can’t live in East Bethel based on your economic circumstances, regardless of how much you might want to live here. I might want to quit smoking cigarettes tomorrow, but I just bought three cartons, what is my intent.”

Ronning, “I wasn’t done. This driver’s license thing. At the last meeting, I asked about your driver’s license and Richard said that Sharon had done hers already and he was going to do his. I don’t think you had enough time. And nobody except God and Richard have the luxury of knowing what is in his mind. But, we are expected to obey the law. There is no intent mentioned in the law. The intent example that was given was a Supreme Court decision. I went back and read it and the guy in question had moved his residency into a district to be eligible to run. The people occupying the apartment didn’t leave at the time, so he couldn’t occupy that place. However, he did occupy a different room in the building, he received mail in the building and he physically resided there. That is completely different. When we look at residency for snowbird that is where they live, not where they can’t live. I didn’t expect it to be this easy. I am still obligated to the law.” Moegerle, “Richard did you file a temporary change of address form?” Lawrence, “I don’t know, Sharon?” Ronning, “Could you explain what the address is and where?” Lawrence, “It is on the sheet there.” Ronning, “Do you know the address Jack?” Davis, “It is 4126 Viking Boulevard NE.”

Brian Bezanson of 22337 Quincy Street NE, “I pulled my tablet out of my pocket and logged on to Craigslist and they only have ads on there for so long and the last ad was for the 26th of November. What I would like to say is not fact it is strictly opinion. You all know I spent two terms up there. And it is hard, and I respect Bob for bringing this up, kudos to you. The thing is, you are required by your duty and obligation to the people to respond to at a higher level of ethics than the average citizen would. Just like in my mind, the employees here have to act with a higher level of conscious and accountability. As a superintendent for a contractor, I could take the bobcat home and grade my driveway. If an East Bethel employee takes it home and grades his driveway that is not acceptable. That is about as clear of an example I can make from an employee standpoint. To me it is about public trust. The public loses their trust in you as individuals. You have failed us.”

Ronning, "I was asking specifically about the address. Where is the address and when was the last time you were in it?" Lawrence, "Here you go, you got a copy of that earlier." Ronning, "Yes, but where is it? Can't you explain where it is?" Lawrence, "It is right near the boat launch on Coon Lake." DeRoche, "Right near Breezy Point. It is Norquist Campground." Ronning, "Have you been in there since the snow?" Lawrence, "No." Ronning, "And that goes back to when?" Lawrence, "Well when did we get snow?" Ronning, "I am not certain. The point is." Lawrence, "The point is if we were discussing this in two months, we wouldn't be discussing this." DeRoche, "Can I call the question?" Moegerle, "I have a few more points, but, I think we are getting there. Mark, Mr. Ronning has said the law says nothing about intent. Is that true? I thought I heard you discussing intent." Vierling, "It is a factor." Moegerle, "And that is a part of the law?" Vierling, "In my opinion, yes, it is."

Moegerle, "Ron, questions?" Koller, "I am the one that at the last meeting brought up the snowbird issue. I have a friend that lives year-round in a camper. His camper is completely winterized and it has water and sewer and he lives in it year-round. It is livable. Most campgrounds open in May and close in October. So, next winter you will have to move out again." Lawrence, "Just because they don't open until May doesn't mean we can't get in." Koller, "Do you have running water to your camper?" Lawrence, "I don't need to. I have, well I can't count the number of friends that have a camper up in Pathfinder Village that have no running water and no sewer service whatsoever. They have navigated just fine." Koller, "They have community bathrooms there." Lawrence, "I do have a bathroom there, it isn't much, but it is a bathroom." Moegerle, "What happens next October when it gets cold, what is your intent? I am looking for a plan." Lawrence, "I don't have a plan. Worse case we move out and wait for it to get warm. These places these gentleman have found, that is great. But the first thing I would ask is what is the heating bill. If you are looking at rent at \$400, but then the heating bill is \$500 that is too much. And, they get mad if you don't pay the utilities. So my question is what do the utilities cost that is all part of the bill. You can't just rent and not pay the utilities, they get real upset." Ronning, "I speak to what was in anyone's mind, but it is reasonable to think that they were responding to, "I am not going to pay \$2,000 a month. \$750 and \$500 heat wouldn't be \$2,000, it would be \$1,250." Lawrence, "We don't even know if it is in East Bethel. I know, you click on these and they say they are in East Bethel but then they are in Ham Lake or other places." Ronning, "So if they are closed in October, that is going to be October, November, December, January, February, March, April and May, that is seven months of no residence. And five months of being in there." Lawrence, "You didn't listen to what I said." Ronning, "You said you didn't go in when the snow was on the ground. Is the gate locked?" Lawrence, "I can get in." DeRoche, "This is becoming redundant, and that is why I called the question. I would request this young lady be allowed to speak and then we call the question."

Kathy Coval of 4482 Fawn Lake Road NE, "I am a taxpayer and I have lived in the City since 1999. And I do sympathize with your situation, my son and his wife lost their home to foreclosure and I have a sister-in-law who is fighting it in the City of Minneapolis right now. The Occupy people are helping her. I understand your plight and the fight and I know what the banks do. But my issue is I wouldn't have known about this until my son called me, he saw it in the Minneapolis paper. I mentioned that I pay taxes. I don't know if you are paying taxes, but I know that in your position you are making decisions about my property taxes. And, I think that is an issue for all of us here. That same son and daughter-in-law tried to live in an RV and they made it one night and they had done a lot of work on it. So, I can appreciate that is not an option in Minnesota even under the best of circumstances. But, the taxes issue is. Part of the reason I am here tonight is my property was affected by the

high voltage power lines. And, the change that the Planning Commission made in that route. It seemed very arbitrary and I want to make sure this is done on fact and law.”

Lawrence, “As far as paying taxes, I will be pay rent to this place, which pays City taxes. Although Bob DeRoche does not pay taxes. At all.” DeRoche, “Would you like to elaborate on that Richard? Because this has been brought up before.” Lawrence, “Go ahead and explain it. It’s legit.” DeRoche, “I will explain it. In 2008 the Governor of Minnesota signed a bill that if you are a 100% disabled veteran a certain amount of housing, or house payment or what the value of it is would be waived. And this is the second time now that as a veteran I am being attacked. And, I have no qualms about that. Because in the letter it says, “This is the least that the State of Minnesota can do for you.” Richard, did you serve?” Lawrence, “Nope, I didn’t serve. However, I do support the troops that I know of and I do a lot of support work for the troops. And, I am not saying you are not deserving of it, I am just saying this lady is talking about paying taxes.” Ronning, “You are talking apples to oranges. Bob is a military veteran with service related conditions and you are not in the military, you don’t have that restriction, you don’t have that opportunity. There is no comparison to what you are talking about and his. None.” Lawrence, “I am still paying taxes through my rent.” Moegerle, “The question that came up while you were talking was to choice of housing. Were you limited in your housing choices because of pet ownership?” Lawrence, “Well that is an issue.” Moegerle, “Did that make it more difficult?” Lawrence, “It is more difficult. But, the real issue is stairs and such as that.” Ronning, “I don’t see anything about pets in the law.” Moegerle, “It is about available housing. Health conditions and pets, some things they can’t rent because of other reasons and I want to look at those issues too.” **DeRoche called the question. Ronning seconded.** DeRoche asked for a roll call. **The vote is to call the question. DeRoche, aye; Koller, aye; Moegerle, aye; Ronning, aye; Lawrence, abstained; motion carries.**

The vote is to declare the seat of the Mayor vacant. Roll Call vote. DeRoche, aye; Koller; aye; Moegerle, nay; Ronning, aye; motion carries. Moegerle, “A vacancy has been declared”

DeRoche made a motion to amend the agenda to add 6.0 A Fill the Vacant Mayor’s Seat. Koller seconded. DeRoche, Koller and Ronning, aye; Moegerle, nay; motion carries.

Public
Hearing for
Liquor
License –
Route 65
Discount
Liquors

Davis explained that staff is recommending that Council conduct a public hearing to take comments from the public regarding an Off Sale Liquor License for Slaw Industries Inc. dba: Route 65 Discount Liquors located at 18453 Highway 65 NE, East Bethel, MN 55011 as required by East Bethel City Code, Article III, Intoxicating Liquors, Section 6-55. This notice was also published in the Anoka County Union.

The process should be that the Acting Mayor opens the Public Hearing and invites members of the audience to step forward and provide comments.

Moegerle opened the public hearing for Route 65 Discount Liquor.

Brad Slawson of Route 65 Discount Liquors, “I am here to ask approval to open a liquor store at 18453 Highway 65 NE. I own the restaurant/bar two doors down and I think it is a good fit for the community, and I am looking forward to a yes vote tonight.” Moegerle, “Does East Bethel have a limit on liquor licenses?” Vierling, “All City’s do.” Moegerle, “How many would we have at this point?” Vierling, “It is on-sale only.” DeRoche, “That is

the old Black Bear building, correct?” Slawson, “Yes, it has been closed for about seven months.” Moegerle, “On your application, in our packet under number 4, name and owner of building you list a Mr. Osborne. I found that it is in fact owned by Osborne Development, Inc. Is this a distinction that should be so listed?” Vierling, “The application is not jurisdictional. It can be modified at any time. I assume you are renting?” Slawson, “That is correct.” Vierling, “Actually, I am sure Council person Moegerle check the county website. And, the Anoka County website is only updated once a year. So, it is not inline with the recorder’s office which is the official record of ownership anyways. I am sure the applicant filled this out the best knew how and that is fine.” Moegerle closed the public hearing.

DeRoche made a motion to approve the Off-Sale Liquor License for Slaw Industries, Inc., dba: Route 65 Discount Liquors at 18453 Highway 65 NE, East Bethel, MN 55011 contingent on a certificate of liquor liability be provided and approval of the State Commissioner of Public Safety. Koller seconded; all in favor, motion carries.

Mayor’s Seat

DeRoche, “There has been a vacancy created in the Mayors spot. By law the Council can fill that spot.”

Ronning made a motion to appoint Robert DeRoche Jr. to the position of Mayor for the City of East Bethel for the remainder of term, until December 31, 2014. Koller seconded.

Moegerle, “I think what has happened here tonight needs more consideration. While this whole thing has been driven in this direction that Mr. DeRoche be Mayor, (the writing has been on the wall for three weeks now), I do think we need to work at a considered pace. I think moving too abruptly is not in the best interest of the City.” Moegerle called the question.

DeRoche, “I would like to make a couple comments. To make the accusation (I will deal with that at another time) but that I have spearheaded this, it started out with a simple question and blossomed into this. I made the attempt to not talk to anyone. For the last three weeks I haven’t slept for crap. I have a knot in my stomach. This is not something I take lightly. I know some people think I don’t have any intellectual integrity. I know some people think I am a naysayer and don’t want to see the City succeed. But, anyone that watches the meetings and read the article in the Minneapolis paper, that was probably the biggest response I got. For me to be accused of abusing other Council Members and throwing insults at them and that is why the City hasn’t gotten anything done? I find that real slanderous. Because people that have known me know that is not my cup of tea. I am a straightforward person.”

“I have had people question my VA Disability, thinking it is not real. Anyone that has had to deal with the VA would understand that to get the rating I have got you just don’t get it. There is physical things going on, and I am not going to go into it. I think we have to move forward. Did I start out on this four year venture to be Mayor, no I didn’t. I will take it and go with it. I don’t think Tom and Ron feel good about what we had to do tonight. I wish People would get all the facts together and understand everything that is behind this and has gone on, before they pass judgment on anybody. Because as long as I can get up in the morning and look in the mirror and say, “You know what, I didn’t try and goof anyone over, I didn’t lie to anyone.. This is the way it is shaking out and that is the way it is.” Ronning, “As far as one person stopping progress, there is no one person that can overrule votes, there

are four votes. And, everybody has one vote, so it is not possible.”

Davis, “Mr. Vierling, before this is voted on, procedurally do we have to declare a vacancy by ordinance?” Vierling, “No, you do not.”

Moegerle asked for a Roll Call vote. DeRoche, aye; Koller, aye; Moegerle, nay; Ronning, aye; motion carries. Moegerle, “Mr. DeRoche is now the Mayor, please take your seat.” DeRoche, “This seat is fine for this evening and I don’t need the gavel, do I?”

DeRoche, “Moving on to 6.0 B, to declare my City Council seat vacant and I am not sure of the procedure to fill it?” Moegerle, “You haven’t amended the agenda to add 6.0 B.” DeRoche, “Yes I did, 6.0 A & B.” Moegerle, “I only heard A.” DeRoche, “I will do it again.” **DeRoche amended the agenda to add 6.0 B Declare the Vacancy in the City Council Seat. Koller seconded. DeRoche, aye; Koller, aye; Moegerle, nay; Ronning, aye; motion carries.**

DeRoche, “I am not sure how do we fill this?” Vierling, “It is available to fill at your request. Some communities go through a process, in terms of seeking applications of interested persons and that nature. But it is certainly up to the Council in terms of how you want to fill it. In terms of both positions, in regards to the Mayoral position and this position, since they are within one year of the election for terms, they will be subject to the November election, 2014.” Davis, “The procedure in the past has been to solicit applications for the vacant position and interview the candidates and appoint a person to the open position.” DeRoche, “With Council’s blessing I direct staff to post it.” Vierling, “You amended the agenda, but, did you declare it?” **DeRoche made a motion to declare a vacancy in my City Council Seat. Koller seconded. DeRoche, aye; Koller, aye; and Ronning, aye; Moegerle, nay; motion carries.**

Vierling, “With that declared, if you want to go ahead and direct staff to solicit applications.” DeRoche, “With the rest of the Council’s blessings, I would like to direct staff to solicit applications from interested parties to fill the Council seat? Is there a time limit we should put on it? Two weeks or 30 days?” Moegerle, “I would say 30 days because we had postings for the commission openings and the only people that applied were the existing and standing. So, I think we should make sure we get a good response from the community and make them fully aware of what is going on and research whether they want to be up here. So, I would suggest 30 days.” Ronning, “What would 30 days before, besides four weeks and two days?” Moegerle, “We could fill it February 5th that is less than 30 days. Next one would be the 19th.”

DeRoche, “What is the thoughts of the staff?” Davis, “Either one is fine, I think we should act as soon as possible, but give an appropriate response time. I think February 5th or the 19th would be okay. The 5th might be too early and we might not be able to get enough information and have enough time to respond.”

Vierling, “If you want to think about this, you may want to suggest a cut of date a week before that time because you might want to have a workshop to review the applications and interview.” Moegerle, “The other thing is the League of Minnesota Cities has a training and the cut of date for that is the end of January, beginning of February. Certainly I think whoever gets appointed needs to go to that League training and the Mayor needs to go to the Mayor’s training for newly appointed also.” Vierling, “Regardless, you should set a cutoff date, I am going to suggest the 12th of February. If they can’t go to the training, we can

work with them and give them any training or assistance and whatever they need.” DeRoche, “Can anybody get the dates from their City e-mail?” Moegerle, “I have been locked out for three weeks.” Ronning, “Talking about agendas, what the last lady said sounded like a pretty good agenda filler. However it could fit.” Moegerle, “We are trying to trying to find out the dates for training for these people.” DeRoche, “Newly Elected Officials Conference, January 31 to February 1st in Brooklyn Center.” Moegerle, “There is no way we can do that. We don’t even know if they will be available. I don’t think it is a factor anymore.” DeRoche, “We can always give them our book.” Ronning, “I got as much out of the question and answer stuff myself.” Moegerle, “Do you have the direction you need?” Davis, “Yes.” DeRoche, “Why can’t we do it on the 5th? We will have to call a special meeting anyways.” Moegerle, “I like the 12th for the cutoff.” Davis, “Either date is fine, it is your preference.” DeRoche, “Okay, we will take the later date.”

Appointment
to
Commissions

Davis, “The Parks, Planning and Roads Commissions are each composed of seven citizen members appointed by City Council for three year terms. The members of these Commissions, whose terms which are set to expire on January 31, 2014, are as follows:

Parks Commission

- Tim Hoffman
- Sue Jefferson
- Denise Lachinski

Planning Commission

- Tanner Balfany
- Brian Mundle

Roads Commission

- Kathy Paavola
- Al Thunberg

These positions were advertised on the City’s Website, Cable Community Channel and Reader Board as well as noticed at the November 21, 2013 Town Hall meeting for new applicants. Applications for the positions closed on January 2, 2014 at 2:00 PM as advertised. An application for the Parks Commission was deposited at City Hall at approximately 4:30 PM on January 2, 2014 by Mr. David Behm. The application was past the deadline and Staff is recommending that the application not be considered at this time. Mr. Behm’s application will be held on file in the event that Parks or other Commission openings become available.

All of the above members, whose terms are set to expire on January 31, 2014, have requested to be re-appointed and were interviewed for these positions in 2011.

Staff recommends Council consider the re-appointment of Sue Jefferson, Tim Hoffman and Denise Lachinski to the Parks Commission; Tanner Balfany and Brian Mundle to the Planning Commission; and Al Thunberg and Kathy Paavola to the Roads Commission for three year terms to expire on January 31, 2017.

Moegerle made a motion to table the Park Commission Appointments for the following reasons. I have been on the Park Commission and I like everyone there. But each one of those Park Commission letters have the same date, have the same verbiage and I have reason

to believe on historical precedent that these letters were prepared for the signatures of these people by staff. If there had not been a fourth person that had applied who did not get an application prepared for them then I would not make this motion. But, the fact is, these letters are identical except for their address and I think it does a disservice for Mr. David Behm who prepared his own application. For the purpose of being open and fair to everyone, yes, it was late, but it was on the exact same date. But, he did not have the benefit of having a letter prepared for him. I think the benefit of the doubt should be extended to him and he should be interviewed.” DeRoche, “Can you back up those allegations?” Ronning, “We are waiting on a second.” Moegerle, “I have attended meetings where they have said, “We will just prepare that letter for you to sign for your application.”

Davis, “Ms. Moegerle is correct, staff did prepare those as a courtesy for those members. It is a precedent that has been done for a number of years and those letters were provided to those people in the event they wished to be reconsidered for reappointment.” Moegerle, “I think it is wonderful that it is a courtesy. But, it is not a courtesy to anyone else on the other commissions. Those people had to write their own letters. Or they amended their letters a little bit. Mr. David Behm didn’t have that courtesy, we don’t have a form that he could just jot his name down and I think to avoid the appearance of cronyism we should postpone the Park Commission Appointments.” Ronning, “Point of Order. There is no second, I don’t know why we are having discussion.” DeRoche, “Is there a second? Hearing none, the **motion fails.**”

Ronning made a motion to appoint Sue Jefferson, Tim Hoffman and Denise Lachinski to the Parks Commission; Tanner Balfany and Brian Mundle to the Planning Commission; and Al Thunberg and Kathy Paavola to the Roads Commission for three year terms to expire on January 31, 2017. Koller seconded. DeRoche, aye; Koller, aye; Moegerle, nay; Ronning, aye; motion carries.

Moegerle, “Congratulations and welcome aboard again.”

Consent
Agenda

DeRoche, “I have some basic corrections to the minutes. I want to pull Item C) Meeting Minutes, December 18, 2013, Regular Meeting.” Moegerle, “I want to pull Item B) Meeting Minutes, December 4, 2013, Regular Meeting.”

Ronning made a motion to approve the Consent Agenda including: A) Approve Bill; B) Meeting Minutes, December 4, 2013, Regular Meeting; C) Meeting Minutes, December 18, 2014, Regular Meeting; D) Resolution 2014-01 Designation of Official Newspaper; E) Pay Estimate No. 4 for Castle Towers/Whispering Aspen 2013 Forcemain Project; F) Approve Tobacco License for Route 65 Discount Liquor; G) Approve Optional 2AM Liquor License Renewal for Route 65 Pub & Grub; H) Renew Animal Control Contract, and the Supplemental Bill List. Koller seconded; all in favor, motion carries.

Moegerle, “I pulled Item B. I have taken time to compare our minutes with other minutes and things we have discussed before. This is a question for staff, there seems to be disparity with what staff prepares on their behalf and what they prepare for Council as far as quality and spell checking and I was wondering if you could explain that to me? Because this has been an issue I have had for more than two years, so I am trying to understand why that is?” Davis, “In comparison to what?” Moegerle, “For the write-ups that we get for our packets, they are full sentences, the punctuation is there, spelling is there. And so with regard to our minutes, they are not the same quality and I am wondering why there is that disparity?” Ronning, “I would encourage we have this conversation offline and make the corrections.”

Moegerle, "I am not making any corrections." Ronning, "No what you are doing is a semi-performance review. You could be creating a hostile environment and I don't want to be part of it." Moegerle, "And I didn't want to be a part of what happened earlier."

DeRoche, "Excuse me folks. One thing that has happened in the past that we are not going to get into is we are not going to be knocking down staff. We are not going to be doing employee reviews. We are not going to be knocking down contractors when we are in the meetings. It has been brought up before that if there are corrections or suggestions that they be brought up to staff before the meeting. And that is something we need to do, because I don't think it puts us in a very good light here." Moegerle, "That is not my question. My question is why is that a difference?" Davis, "The answer to that is the minutes are totally distinct and different. Sometimes things are said in complete sentences. I think that Wendy does a tremendous job in preparing these. And if you go back and compare it to the DVDs, I think you will find a great deal of accuracy in those. A write-up is something that takes a written description and sets out facts. What she is doing is taking what is stated here in the meeting and putting it down on paper. Again, it is two totally different things when you have time to think and write things out. And I think she reflects those very accurately."

Moegerle, "And, I have said before, for the person that does the transcription, it is very difficult for them to proofread their own documents. I give Wendy kudos for what we get down. But we have persistent errors. But, when I look at our neighboring cities, they don't seem to have those kinds of issues." Davis, "They don't do minutes generally like we do them either. They copy and paste things and then put down what the vote was and they may put down two or three comments that are made. But, they don't put down exact quotes in the ones I have seen. I think there is a huge difference in the way we take minutes and other cities do and to try to compare the two is very difficult." DeRoche, "Is there a motion?" Moegerle, "No and I am not going to make a motion."

DeRoche made a motion to approve Item B) December 4, 2013 City Council Minutes as written. Koller seconded. Moegerle, nay; DeRoche, Koller and Ronning, aye; motion carries.

DeRoche, "I asked to remove the December 18, 2013 minutes because on the last page, the motions, the one that deals with declaring the vacancy of the Mayor's position. The third paragraph, votes need to be reversed, DeRoche and Ronning voted for that and Koller and Moegerle voted against. **DeRoche made a motion to approve Item C) December 18, 2013 City Council minutes as amended. Koller seconded. Moegerle, nay; DeRoche, Koller and Ronning, aye; motion carries.**

Ordinance 48, Second Series Davis explained that on September 25, 2013 City Council adopted Ordinance 46, Second Series amending the Zoning Code relating to accessory structures. Council also directed staff to have Planning Commission look at some additional items in the zoning code relating to Section 14. Detached Accessory Structures.

Planning Commission discussed this item at their October 22, 2013 meeting and Brian Mundle made a motion to approve the changes as follows to the Zoning Code Section 14: 2A, add back in "without prior approval of the City Council", 2.J add Fish Houses under the definition of Temporary Structures, 2.E define Pole-Type, 2.L include language that states stairs should be located in a side or rear yard, and 4.A remove R2 from the table with 12 foot sidewalls. Cornicelli seconded; all in favor, motion carries.

A public hearing was held at the November 26, 2013 Planning Commission meeting for the Zoning Code changes and the motion that was made at the October 22, 2013 Planning Commission meeting was reaffirmed.

Staff is recommending that Council consider the approval of Ordinance 48, Second Series, Amending Appendix A, Zoning, Section 1, General Provisions of Administration and Section 14. Detached Accessory Structures and direction to publish.

DeRoche made a motion to table Ordinance 48, Second Series, Amending Appendix A, Zoning, Section 1, General Provisions of Administration and Section 14. Detached Accessory Structures. Because there are some specifications on height of buildings under an acre, 10 feet and it was my understanding it was going to be 12 feet. And the concern is if there is a 12 foot door. **Ronning seconded; all in favor, motion carries.**

2014 Fee
Schedule

Davis explained that at the December 18, 2013 meeting, Council approved the 2014 Fee Schedule and directed Staff to prepare this in the form of an Ordinance with directions to publish. This has been completed and the Fee Schedule is effective as of January 3, 2014.

There was discussion concerning a two tiered system of Building Inspection Fees with one for residential and one for commercial. Staff had discussed presenting this in the form of an itemized alternative to Council but instead of listing separate commercial fees, the calculation of Building Permit Fees is proposed to be based on valuation per the 1997 Uniform Building Code (UBC), Table 1-A-Building Permit Fees, unless otherwise specified in the fee schedule.

This creates the two tiered system for fees and bases uniform rates on charges established by the UBC which are based on valuation of the improvements. This schedule is incorporated in the Minnesota State Building Code and is consistent and utilized by most Cities in the Metro Area including Ham Lake, Oak Grove, Columbus, Isanti and Cambridge.

Licenses and fees income represent approximately 1% of the total General Fund Budget exclusive of Building Permit Fees.

Staff recommends adoption of Table 1-A, Building Permit Fees, 1997 Uniform Building Code and changes as noted as the fee schedule for all Building Inspection and Permit Fees unless otherwise specified in the Fee Schedule.

Koller made a motion to approve the amended building permit fees as presented. Moegerle seconded.

Moegerle, "At the top of the page I see where it is calculated based on valuation based on the 1997 Uniform Building Code. From a legal standpoint do we have in there, "As amended from time to time." Vierling, "That table hasn't been amended since 1997 and we don't see any opportunity for that soon." Moegerle, "Building Moving Fee, my understanding is we had two buildings moved into East Bethel last year. By removing that does it make it under the 1997 UBC?" Davis, "It will be based on valuation." Moegerle, "I noticed that you changed the name of "Certificate of Compliance" for a fence permit to just "Fence Permit". Does that mean once a fence is installed there is no compliance check on that?" Davis, "There is a final inspection on it." Moegerle, "I thought this was difficult to read, and when I read some of the others when it was divided up into three columns it was clearer. Particularly when it came to transformers and some of those. The reason I say that

is if it is clearer, you have less staff time. And, I don't know if that is something that could be done." Davis, "I agree. There are better tabular means to display this and that is something we will work on, to present it in a better form." Moegerle, "Special inspections hourly rate. Is that also specified by 1997 table?" Davis, "That is what our current costs are.."

DeRoche, "One clarification on the fence, does that mean any fence? If my neighbor puts up a 2 foot fence? That is pretty steep if someone is just putting up a little 10 foot picket fence along their yard. That is my own personal thoughts." Koller, "They probably won't get a permit." DeRoche, "That is probably what is going to happen. And, if you put up a six foot fence around your property I believe our ordinance reads you have to put it three feet on your property to allow for maintenance and the good side has to be facing out. So that may be a fee, but this says if you just have a little garden fence, or even if you put up a fence around your garden to keep the rabbits out. Because it is not really defined in here." Davis, "We can clarify that more, but to my knowledge no one has ever come in for a permit for that type of fence. That could create an issue, someone could be driving around and say, "There is a fence." Moegerle, "Remember, we are a City that only enforces things through complaints." **All in favor, motion carries.**

Commission/
Committee
Assignments
for 2014

Davis explained attached is a spreadsheet with the Commission/Committee assignments for 2010-2013. The following are the Commission, Authority, Committee and appointed positions for consideration. I think there was concern from some of the Council Members that if there were some change here tonight that we might want to give this some more time."

DeRoche made a motion to table the Commission/Committee assignments for 2014 until the next Council meeting. Moegerle seconded. DeRoche, "I do want to name the Mayor Pro-tem tonight." Moegerle, "That can wait until the next meeting. You aren't going anywhere and Mr. Ronning will be here next meeting."

DeRoche made a motion to table the Commission/Committee assignments for 2014 other than the Mayor Pro-tem. Koller seconded. Moegerle, nay; DeRoche, Koller and Ronning, aye; motion carries. .

DeRoche made a motion to appoint Tom Ronning as the Mayor pro-tem. Koller seconded. Ronning made an amendment to the motion to table the appointment to the next meeting. Moegerle, "Isn't it technically Acting Mayor, instead of Pro-tem? I am pretty sure that is what our ordinances say." Vierling, "They are one in the same." **Koller seconded; all in favor, motion carries.**

MCES
Agenda

Davis explained that as part of the plan to address the City's financial obligations for the Municipal Utilities Project, a meeting with Pat Born, MET Council Regional Administrator, and Jason Willet, Financial Manager with the Metropolitan Council Environmental Services (MCES) has been scheduled for 11:00 AM on January 10, 2013 at the MET Council Office in St. Paul. The purpose of the meeting will be to determine the interest and desire of the MCES to explore ways to address our financial obligations to and the Cooperative Construction Agreement with the MET Council. The topics which the City is proposing for discussion are as follows:

1. Restructuring the document to adjust the dates that have been changed due to project delays;
2. Language revisions as appropriate;

3. SAC rates and minimum flow charges;
4. Reserve Capacity Loan;
5. Developing Community Standard;
6. Transfer of MCES infrastructure; and
7. Growth Forecast Clause.

Jack Davis and Mike Jeziorski will represent Staff at this meeting. It is Staff's recommendation that Council be represented by no more than two Councilpersons and preferably one. Council should designate the representative(s) at our January 8, 2014 meeting. Should more than two members of Council wish to attend, Staff need notification no later than Monday, January 6, 2014 so we can post this as a meeting.

Davis, "I received no additional notification from Council Members on attending this meeting." Moegerle, "Actually, my schedule has opened up." Davis, "And with the change of Mr. Lawrence tonight, we need to decide who is going to go and how many."

DeRoche made a motion that Tom Ronning, himself and Jack Davis and Mike Jeziorski go to the meeting at Met Council. Koller seconded. Moegerle, "Is Pat Born going to be in attendance?" Davis, "Yes." Moegerle, "Based upon his attendance, and my past relationship with him, I think it would be beneficial to trade upon that experience. And I make myself available to be there on Friday at 11:00." **Moegerle, nay; DeRoche, Koller, and Ronning, aye; motion carries.**

Moegerle, "Are we going to have any discussion about this agenda?" Davis, "We can do that here." Moegerle, "My concern is about the Rural Growth Center and what the plan is for East Bethel internally, but also in regard to Met Council and in paragraph 5 they talk about Oak Grove and other communities hooking up to this. Seems we need to get information about what other communities are saying and what populations are." Davis, "The three reasons we are calling this meeting is because the Met Council's population projections make it impossible for us to meet the defined SAC Goals that are required for this. The other issue is the new policy of transportation orientated design is going to start refocusing resources and growth initiatives to the center city which will take away those opportunities from East Bethel. And also the fact that this is a demonstration project and benefits from this project will not really be shared by the City, but will benefit the Met Council directly and therefore we should be given some additional considerations as to what our obligations are on the project. That is the premise to the meeting."

DeRoche, "It is my understanding that the meeting is going to be a touch and base. They made statements that everyone wants to work with us. Go in there with an open mind and ask questions and see what ground we are on. Has to be a fact finding mission. And to try to go in there and get all the information and pin them against the wall would be a mistake." Moegerle, "I don't think anyone suggested that. But, I would like to know if staff thinks that membership in Metro Cities would be a benefit to us. Put that in the update after the meeting, I would like staff's opinion on whether that should be our approach to Met Council." DeRoche, "I think that should come from the entire Council, if there is going to be direction." Moegerle, "I am asking for one sentence. More information is power." Ronning, "If there is a staff recommendation or request for Metro Cities, I would like a finite definition of what their work structure is, authority is, are they autonomous, are they elected to something or the other." Moegerle, "Metro Cities made a presentation to us." Ronning, "Those seem like reasonable things to ask when it is \$4,500 the first year and then it goes up to \$7,000+ the second year. And I would like to know what they would do." DeRoche, "I

didn't know we decided to go with Metro Cities." Ronning, "I don't believe we have."

- Staff Reports Davis, "We don't have anything to report at this time."
- Council Reports – Moegerle Moegerle, "It has been real quite. At the last Council meeting my computer crashed, so I haven't gotten e-mails for the last three weeks. So it has been a blessedly quite time. Very cold and snowy, still having a hard time getting up the hill by our house, but, it is going to melt on Friday."
- Council Report – Ronning Ronning, "When do we get to Indian summer. I wasn't able to get to the Planning Commission meeting and they made a recommendation this evening and everything was as recommended, I believe."
- Council Report – Koller Koller, "I didn't make it to the Fire Department because it was too cold. I had the Upper Rum River Watershed Management Organization meeting yesterday and we approved the new contract with Anoka Conservation District. And, I have the Sunrise River Watershed Management Organization meeting tomorrow and we have to approve the contract with Anoka Conservation District."
- Mayor's Report – DeRoche DeRoche, "I personally don't think the roads on Coon Lake are too bad. To get rid of the ice we would have to put so much chemicals down it would ruin the new roads. I think the crews did a bang up job down there. I don't think people realize that when we get those little ice bursts like Saturday, it is kind of hard to plow it down to the bare streets. I am not a plow driver, but I know what it is like to scrape the ice off a driveway."
- "As to the people of East Bethel, know that we are going to make strides forward, we have to. I think our meetings need to be more matter of fact. We get the agenda packets soon enough that everyone has time to read it. Whether it is online or paper it shouldn't matter. And if there are corrections to be made, they can be directed to staff, instead of doing it up here. And when we get to the meeting it shouldn't be these long drawn out conversations. I understand the emotion thing, I get caught up in it, and everyone does. But it has to be these are the facts, all five of us have a vote, and hopefully when you vote, you vote what is on your mind. You take your common sense, take your life experiences, and take what staff has put together and make the best decision you think. As long as you can say you did the best you could, I don't know what more people can ask. It is unfortunate that some people think I stuck a bull's-eye on Richard. That was not my intent ever. That is not my game." Ronning, "That was his comment, Richards." DeRoche, "So be it, I will take the grief for it. So be it. I don't regret it. I have no comments other than that, but, we need to move ahead."
- Adjourn **Moegerle made a motion to adjourn at 9:42 p.m. Koller seconded; all in favor, motion carries.**

Attest:

Wendy Warren
Deputy City Clerk