

City of Ramsey
Agenda
Regular Planning Commission
Thursday April 7, 2011

NOTE: MEETING WILL NOT BE TELEVISED
Immediately following the 7:00 p.m. Board of Adjustment meeting
Note Room Change-Lake Itasca Room, 7550 Sunwood Drive NW

- 1. Call to Order**
- 2. Citizen Input**
- 3. Approve Agenda**
- 4. Approve Minutes**
 1. Approve the following Planning Commission meeting minutes:
Planning Commission meeting minutes dated March 3, 2011
- 5. Note City Council Minutes**
 1. Note the following City Council Meeting Minutes:
City Council meeting minutes dated February 8, 2011
- 6. Public Hearing/Commission Business**
 1. Appointment of Chairperson and Vice Chairperson.
 2. Introduce Ordinance to Amend City Subdivision Code Related to Financial Sureties for Required Improvements
 3. Presentation of the Basics of Planning and Zoning
 4. Staff Update
 5. Upcoming Training Opportunities
 6. Planning Minnesota-Official Newsletter of the American Planning Association, Minnesota Chapter
 7. Zoning Bulletins
- 7. Commission/Staff Input**
- 8. Adjournment**

Regular Planning Commission

Item #: 4. 1.

Date: 04/07/2011

By: JoAnn Shaw
Community Development

Information

Title:

Approve the following Planning Commission meeting minutes:

Planning Commission meeting minutes dated March 3, 2011

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

Planning 03.03.11

Form Review

Inbox

Tim Gladhill

Aaron Backman

Form Started By: JoAnn Shaw

Final Approval Date: 03/29/2011

Reviewed By

Tim Gladhill

Aaron Backman

Date

03/29/2011 08:29 AM

03/29/2011 08:50 AM

Started On: 03/28/2011 02:30 PM

**PLANNING COMMISSION
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA**

The Ramsey Planning Commission conducted a regular meeting on Thursday, March 3, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Chairperson Levine
 Commissioner Ralph Brauer
 Commissioner Dunaway
 Commissioner Gary Van Scoy

Members Absent: Commissioner Bryan Rogers

Also Present: Senior Planner Tim Gladhill

CALL TO ORDER

Chairperson Levine called the regular meeting to order at 7:03 p.m.

CITIZEN INPUT

Bruce Bacon, 7363 175th Avenue NW, questioned his zoning and requested that the changes be explained.

Mr. Bacon's concerns will be addressed at the public hearing.

APPROVAL OF AGENDA

Motion by Commissioner Van Scoy, seconded by Commissioner Brauer, to approve the agenda as presented.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Van Scoy, Brauer, and Dunaway. Voting No: None. Absent: Commissioner Rogers.

APPROVE PLANNING COMMISSION MINUTES

Motion by Commissioner Brauer, seconded by Commissioner Dunaway to approve the following minutes as presented:

- 1) Planning Commission regular meeting minutes dated February 3, 2011.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Brauer, Dunaway, and Van Scoy. Voting No: None. Absent: Commissioner Rogers.

NOTE CITY COUNCIL MINUTES

The following Council minutes were noted:

- 1) City Council regular meeting minutes dated January 11, 2011
- 2) City Council regular meeting minutes dated January 25, 2011

PUBLIC HEARINGS/COMMISSION BUSINESS

Case #1: Public Hearing – Consider Ordinance to Amend Section 117-90 “Map” of Chapter 117 of the Ramsey City Code Related to the 2030 Comprehensive Plan

Public Hearing

Chairperson Levine called the public hearing to order at 7:05 p.m.

Presentation

Associate Planner Gladhill presented the Staff Report.

Citizen Input

Bruce Bacon, 7363 175th Avenue NW, stated his request as to know his zoning and that the change be explained.

Senior Planner Gladhill stated Mr. Bacon's zoning is designated as rural developing, it was previously rural preserve and the rural preserve zoning designation is being eliminated. He continued and clarified to the audience that there is not any pending development, property owners don't have to subdivide, this just gives options as what property owners may do with their property.

Mr. Bacon stated his concern is that the term rural developing sounds like it is developing. He stated he was in attendance to hear what is said and would appreciate as much general detail as available at this time.

Senior Planner Gladhill stated this assigns Mr. Bacon's parcel to a different category of residential, not for suburban densities or city sewer & water lots, but can sell an existing parcel, or subdivide to 2 ½ acre lots, or stay the way it is.

Commissioner Brauer stated that Mr. Bacon is essentially under the same zoning he has been.

Mr. Bacon asked about the ditches and if there is any consideration on how to maintain the ditches.

Senior Planner Gladhill stated the zoning does not deal with how the ditches are maintained; that is separate from the zoning discussion. Concerns with public ditches would be worked through Public Works and the right-of-way ordinance.

Lonnie Gray, 17530 Nowthen Blvd., asked the difference between R-1 Residential MUSA and R-1 Residential Rural Developing. He also asked how the change would affect property taxes.

Senior Planner Gladhill stated there are two categories for residential zoning. They are R-1 Residential MUSA, or R-1 Residential Rural Developing. The rural is larger sizes and MUSA is smaller sewered lots. The property tax question would need to be directed to the county assessor.

Commissioner Brauer stated that the County Assessor determines the property values. The city has no control over the property taxes.

Discussion ensued regarding the definitions of MUSA and rural developing.

Senior Planner Gladhill stated that he would contact the county assessor and get information on how taxes could be affected by the change.

Merlin Hunt, 17860 Nowthen Blvd., complimented the staff on the work done on the zoning changes, it doesn't confiscate property, and it allows people to develop if they want to. This ordinance applies the code in a fair way.

Jim Plowman, 6810 Green Valley Road, stated his zoning is becoming B-1 and he is requesting a tax abatement until it becomes a business.

Senior Planner Gladhill stated this is one of the areas that he is requesting to wait to be amended to see if this is one that should remain business. His recommendation is to take this off the current map and then work with the property owners to see if a Comprehensive Plan amendment should go forward.

Keith Kiefer, 6203 Rivlyn Ave, stated he thinks the property held by Hope Fellowship and Al Pearson should not be rezoned to residential and is best suited for business. He thinks the city has a conflict of interest in rezoning this to residential seeing how much land they own that is zoned business and commercial.

Senior Planner Gladhill stated he has been working with Hope Fellowship regarding their site and thinks they will come up with a mutual agreeable solution.

Al Pearson, 14821 Bowers Drive, stated the question he has is on the 90 acres adjacent to the proposed Legacy development and what the zoning is now and how it will change.

Senior Planner Gladhill stated it is a shifting of residential type uses, so a shifting of low density to medium and a small portion of high density.

Mr. Pearson stated that if changes are good for the city, then the changes are good for him.

John Weborg, 17512 Nowthen Blvd., stated he would like to be on the list of notification for tax information on how this affects property value.

Senior Planner Gladhill stated the information would be online, at city hall and at the council meeting of March 22nd when this is brought forward, there will not be a mailing.

Byron Cole, 6951 168th Avenue NW, stated his land is next to the Brookfield Addition on the north and west side and wanted to clarify if it is ghost platted.

Senior Planner Gladhill stated there is a preliminary plat approved, they are at the third phase and any changes to the plat would require notification within 700 feet.

Commissioner Brauer stated any changes to the plat would come before the Planning Commission.

Eric Henry, chairman of Hope Fellowship of Ramsey, communicated their appreciation to Senior Planner Gladhill for working with them.

Commissioner Van Scoy stated as a point of clarification it appears the parcel east of Central Park, the St. Katherine Drexel parcel is being changed.

Senior Planner Gladhill stated that there was already a Comprehensive Plan amendment for that parcel at site plan review; it is not being changed at this time.

Motion by Commissioner Van Scoy, seconded by Commissioner Dunaway, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Van Scoy, Dunaway, and Brauer. Voting No: None. Absent: Commissioner Rogers.

The public hearing closed at 7:45 p.m.

Commission Business

Associate Planner Gladhill explained how the MUSA area expanded. He thanked the people for taking time to be involved in the process.

Motion by Commissioner Brauer, seconded by Commissioner Van Scoy to recommend City Council approve the ordinance removing the Commercial area on Green Valley Road, and the Hope Fellowship parcel until Staff and Property Owners work something out, and that the City will contact the County Assessor regarding tax implications and ordinance not go before City Council until tax information is available.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Van Scoy, Brauer, and Dunaway. Voting No: None. Absent: Commissioner Rogers.

Case #2: Consider Ordinance to Amend City Code Section 117-118 (Town Center) of the Ramsey City Code

Public Hearing

Chairperson Levine called the public hearing to order at 7:52 p.m.

Presentation

Associate Planner Gladhill presented the Staff Report.

Citizen Input

There was none.

Motion by Commissioner Dunaway, seconded by Commissioner Van Scoy, to close the public hearing.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Dunaway, Van Scoy, and Brauer. Voting No: None. Absent: Commissioner Rogers.

The public hearing closed at 7:59 p.m.

Commission Business

Discussion ensued regarding the administrative changes and the Architectural Review Board.

Motion by Commissioner Dunaway, seconded by Commissioner Brauer to recommend City Council adopt the ordinance amending City Code Section 117-118 (Town Center) removing reference to religious institutions, and eliminating the Architectural Review Board and relocating development guidelines and the master plan under Planning Commission.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Dunaway, Brauer, and Van Scoy. Voting No: None. Absent: Commissioner Rogers.

Case #3: Staff Update

The Staff Update was noted.

Commissioner Brauer gave appreciation and recognition to Planning Manager Miller for her work. He stated she came in at a difficult time in the city and did a good job. He wishes her well and stated she will do well where ever she goes.

Commissioners concurred with Commissioner Brauer's statement.

Case #4: Zoning Bulletin

The Zoning Bulletin was noted.

OTHER COMMISSION BUSINESS

ADJOURNMENT

Motion by Commissioner Dunaway, seconded by Commissioner Van Scoy, to adjourn the meeting.

Motion Carried. Voting Yes: Chairperson Levine, Commissioners Dunaway, Van Scoy, and Brauer. Voting No: None. Absent: Commissioner Rogers.

The regular meeting of the Planning Commission adjourned at 8:15 p.m.

Respectfully submitted,

Tim Gladhill
Senior Planner

ATTEST:

JoAnn Shaw
Planning Division Secretary

Drafted by JoAnn Shaw

Regular Planning Commission

Item #: 5. 1.

Date: 04/07/2011

By: JoAnn Shaw
Community Development

Information

Title:

Note the following City Council Meeting Minutes:

City Council meeting minutes dated February 8, 2011

Background:

n/a

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

City Council 02.08.11

Form Review

Inbox

Tim Gladhill

Aaron Backman

Form Started By: JoAnn Shaw

Final Approval Date: 03/29/2011

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03/29/2011 08:29 AM

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Started On: 03/28/2011 12:44 PM

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**CITY COUNCIL
CITY OF RAMSEY
ANOKA COUNTY
STATE OF MINNESOTA**

The Ramsey City Council conducted a regular meeting on Tuesday, February 8, 2011, at the Ramsey Municipal Center, 7550 Sunwood Drive NW, Ramsey, Minnesota.

Members Present: Mayor Bob Ramsey
Councilmember Randy Backous
Councilmember David Elvig
Councilmember David Jeffrey
Councilmember Colin McGlone
Councilmember Jason Tossey
Councilmember Jeffrey Wise

Members Absent: None

Also Present: Deputy City Administrator Heidi A. Nelson
Public Works Director Brian Olson
Associate Planner Timothy Gladhill
City Engineer Tim Himmer
City Attorney William Goodrich

1. CALL TO ORDER

Mayor Ramsey called the regular meeting of the Ramsey City Council to order at 7:00 p.m., followed by the Pledge of Allegiance led by Mayor Ramsey.

2. PRESENTATION

Mayor Ramsey presented the State of the City Address.

3. CITIZEN INPUT

Frank Yamoutpour, 6401 Highway 10, expressed his concern with the median on Sunfish Lake Boulevard near his place of business. He asked if it could be opened up and presented Council with drawings of potential fixes in regard to the traffic.

Mayor Ramsey said the medians are an issue that is being worked on. There is a new County Board, and this item is being discussed. He thanked Mr. Yamatpour for his work.

4. APPROVE AGENDA

Motion by Councilmember Elvig, seconded by Councilmember Tossey, to approve the agenda as presented.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Tossey, Backous, Jeffrey, McGlone, and Wise. Voting No: None.

5. CONSENT AGENDA

Motion by Councilmember Wise, seconded by Councilmember Jeffrey, to approve the following items on the Consent Agenda:

1. Receive Building Permit Revenue Report December 2010
2. Approve the following Meeting Minutes:
 - a) City Council Work Session ó 1/4/2011
 - b) City Council Special ó 1/4/2011
 - c) City Council Special ó 1/11/2011
 - d) City Council Work Session ó 1/11/2011
 - e) City Council Regular ó 1/11/2011
3. Authorize Funding in the amount of \$90 for the Ramsey Seniors History Program
4. Authorize Construction Incentive Payment to North Valley, Inc. for City project 08-27, 167th Avenue Reconstruction
5. Adopt Resolution #11-01-035 Approving Cash Disbursements Made and Authorizing Payment of Accounts Payable Invoicing Received during the Period of January 20, 2011 through February 2, 2011
6. Adopt Resolution #11-02-036 Adopting the 2011 Enterprise Fund Budgets and Adopt Resolution #11-01-037 Amending the 2010 Enterprise Fund Budgets
7. Adopt Resolution #11-02-038 Adopting the 2011 Economic Development Authority Budget and Adopt Resolution #11-02-039 Amending the 2010 Economic Development Authority Budget
8. Adopt Resolution #11-02-040 Amending the 2010 General Fund Budget
9. Adopt Resolution #11-02-041 which is a Joint Resolution of the Cities of Andover, Anoka and Ramsey, Requesting Anoka County to Consider a Study of Roadway Design Options to Optimize business Opportunities while Maintaining Reasonable Traffic Safety Standards
10. Report from Finance Committee of 1-25-11
 - 1) Appointment of a Chair and Vice Chair of the Finance Committee: Council confirmed the recommendation to select Councilmember Elvig as Chair and Councilmember Backous as Vice Chair of the Finance Committee.
11. Report from Public Works
 - 1) Election of Officers: *Council voted to confirm Election of Councilmember McGlone as Chairperson and Councilmember Elvig as Vice-Chairperson for the Public Works Committee.*

- 2) Review Annual Snow Activities: *Staff was directed at the PW to draft a sidewalk maintenance policy and bring it back for discussion in April. Council ratified such action.*
- 3) Proposal to Retrofit Lighting at Public Works Campus - *Staff was directed to get quotes on LED lighting and bring back to Public Works. Council ratified that action.*
- 4) Consider Request to Purchase a Drainage and Utility Easement at 7319 - 162nd Lane NW ó *Upon recommendation of the PW Committee - City Council denied acquisition of the easement, subject to the City Attorney's opinion.*
- 5) Consider Plan for Potential Soil Import to the COR - *City Council ratified the recommendation of the PW Committee and voted to acquire the drainage and utility easement across the property located at 17331 Chameleon Street in the amount of \$1500 and directed staff to conduct the necessary field surveys to prepare the easement legal descriptions.*
- 6) Consider Change Order of IP #08-34 ó 151st Avenue, 152nd Avenue and Fluorine Street ó *This case was brought to the Council at their regular meeting of 1/25/2011.*
- 7) Consider Priority Street Lighting along County Road #116 (Bunker Lake Boulevard) ó *The motion of the PW Committee was to recommend that City Council approve installation of priority street lights at Bunker Lake Boulevard north of The COR and Bunker Lake Boulevard and Zeolite Street. Consensus was to wait until the ground thaws for installation. Staff requested revised proposals from Connexus based upon this direction and is anticipating a spring installation if ratified by Council. Council ratified this action.*
- 8) Review of Potential Pond Cleaning Project near 155th Lane NW and Armstrong Boulevard ó *At the Committee level, staff was directed to instruct the resident on the City's petition process for public improvements, and have them perform the leg work to see if there is consensus in the neighborhood on the need for such a project. No action by Council is necessary.*
- 9) Consider Minnesota Department Health (MDH) Grant for Wellhead Protection Implementation ó *This case was brought to the Council at their regular meeting of 1/25/2011.*
- 10) Consider Offer to Purchase a Drainage & Utility Easement for the Chameleon Street NW Paving Project ó *Council ratified the recommendation of the Public Works Committee to acquire the drainage and utility easement across the property located at 17331 Chameleon Street in the amount of \$1,500 and have staff conduct the necessary field surveys to prepare the easement legal descriptions.*
- 11) Consider Request for the Installation of a 4-Way Stop at the Intersection of Armstrong Boulevard and Alpine Drive ó *Based upon discussions and taking into account the planned Armstrong/Bunker improvement project, the Committee motioned to recommend to the Council that staff work with Anoka County to consider options to enhance the safety of Armstrong Boulevard and Alpine Drive intersection during the trial construction component of the project – Council ratified that recommendation.*

- 12) Consider Award of a Contract for Engineering Services to Perform the City's required annual Bridget Inspections and Reporting *ó This case was brought to the Council at their regular meeting of 1/25/2011.*

Councilmember Tossey drew attention to item number 8.1, noting that every department in the City came in under budget.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Wise, Jeffrey, Backous, Elvig, McGlone, and Tossey. Voting No: None.

6. PUBLIC HEARING

6.01: Public Hearing to Introduce Ordinance for Sale of City Owned Property in Auditor's Subdivision Number 27; Case of City of Ramsey and Cross of Hope Lutheran Church

Mayor Ramsey closed the regular portion of the City Council meeting at 7:26 p.m. in order to conduct a public hearing.

Public Hearing

Mayor Ramsey called the public hearing to order at 7:26 p.m.

Presentation

Associate Planner Gladhill reviewed the staff report.

Citizen Input

Robert Longfield stated the church wanted to come through his property with the road years ago. He is on the south side of the property and asked if that is still under consideration.

Associate Planner Gladhill explained the expansion is largely on the parcel to the east. There were comments by the County in the past relating to property on the south side. The City looked at that, and it is dependent if that area would still develop.

Mr. Longfield said the City did have meetings with the developer to take his property for that road. He noted if it is still under consideration, he would like to be assured that it will also be considered that his 80 acres would have to have two accesses.

Associate Planner Gladhill said if the area to the south develops, there are standards to follow. This could be an option, but there is no active development proposal.

Discussion took place regarding a possible second access on the north of the property rather than coming through Mr. Longfield's property.

Associate Planner Gladhill suggested the City hold a discussion with the church.

City Engineer Himmer stated they are platting both pieces together, but there is a piece left as an outlot. This could spur discussion, which would be included as this item proceeds.

Councilmember Elvig inquired what the process is to add onto a cemetery.

Associate Planner Gladhill explained there is a process to expand that area, which includes platting and survey work.

Councilmember Elvig suggested if anything comes about to expand that cemetery property, the City will want to keep an eye out for access.

Motion by Councilmember Jeffrey, seconded by Councilmember Wise, to close the public hearing.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Jeffrey, Wise, Backous, Elvig, McGlone, and Tossey. Voting No: None.

The public hearing was closed at 7:38 p.m.

Council Business

Mayor Ramsey called the regular City Council meeting back to order at 7:38 p.m.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to introduce an ordinance authorizing the sale of property legally described on attached Exhibit A, contingent upon recording of Cross of Hope Addition plat AND to authorize the Mayor and City Administrator to execute a Quit Claim Deed releasing the permanent City easement to Cross of Hope Lutheran Church upon recording of the Cross of Hope Addition plat, which plat shall dedicate the requisite right of way for 179th Lane NW, contingent upon concurrence with any impacted utilities, if applicable.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Wise, Backous, Jeffrey, McGlone, and Tossey. Voting No: None.

7. COUNCIL BUSINESS

7.01: Adopt Ordinance to Amend Section 117-111 (R-1 Residential District) of the Ramsey Zoning Code Relating to Rear Yard Setbacks in the R-1 MUSA District

Associate Planner Gladhill reviewed the staff report.

Councilmember Wise commented this is not an ideal situation, but it is a good fix.

Motion by Councilmember Wise, seconded by Councilmember Elvig, to move to waive the reading of the ordinance per City Charter and adopt Ordinance #11-01 amending Chapter 117-

111 of the City's Zoning Code to provide a reduced rear yard setback of twenty (20) feet for lots whose rear property line entirely adjoins land zoned as Park.

A roll call vote was performed by the Recording Secretary:

Councilmember Backous	aye
Councilmember Elvig	aye
Councilmember Jeffrey	aye
Councilmember McGlone	nay
Councilmember Tossey	aye
Councilmember Wise	aye
Mayor Ramsey	aye

Motion carried.

7.02: Consider Award of Contract for City Project 10-24; Wetland 656 Outlet

City Engineer Himmer reviewed the staff report.

Councilmember Elvig said there was question of how many culverts are actually needed. He asked if it was a culvert issue or if it is silted in.

City Engineer Himmer said the culverts had been mapped out and will be cleaned.

Motion by Councilmember Elvig, seconded by Councilmember Jeffrey, to award a contract to Dry Excavating in the amount of \$28,026 for City project 10-24; wetland 656W outlet.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Jeffrey, Backous, McGlone, Tossey, and Wise. Voting No: None.

7.03: Consider Request to Purchase a Drainage and Utility Easement at 7319 162nd Lane NW

City Engineer Himmer reviewed the staff report and read a letter from residents Terrance and Betty Belschner regarding their easement application.

City Attorney Goodrich explained this was a standard offer for acceptance that was referenced in the letter; however, the offer was never signed and the term is incomplete. The City did not sign this paper on the bottom, nor did the Council approve it. Therefore, this is not a binding offer and the courts would say that too much time has passed.

Councilmember Wise clarified if the question is the dollar amount, or whether they can still be paid for their easement.

City Engineer Himmer answered it is not about the dollar amount. The offer was made in the past, and the offer said to contact the City when they are ready.

Councilmember Wise stated the City doesn't have an obligation legally, but he feels it is the right thing to honor the offer.

Mayor Ramsey asked if the City needed the easement.

City Engineer Himmer stated the easement is not needed.

Councilmember Tossey questioned how many other properties have not responded to the letter the City sent in the past.

City Engineer Himmer responded that 14 out of the 25 properties have not responded. The payment was \$1,500 in 2005-2006.

Mayor Ramsey explained this was an attempt to discover any owners that may have been interested at the time in selling if there was a corridor.

Councilmember Backous added the offer was made for the hardship it would cause. After a five-year period, the hardship is gone.

Motion by Mayor Ramsey, seconded by Councilmember Backous, to ratify the Public Works Committee recommendation, and not purchase the ditch easement on the property located at 7319 162nd Lane NW.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Backous, Elvig, Jeffrey, McGlone, Tossey, and Wise. Voting No: None.

7.04: Consider a Resolution to Reorganize the Community Development Department

Deputy City Administrator Nelson reviewed the staff report. She noted the planning consulting services can be used as needed, resulting in savings to the City. She suggested an RFP be sent out as soon as possible.

Councilmember McGlone asked why the RFP needed to be sent now.

Deputy City Administrator Nelson explained there are a number of items coming forward regarding code amendments. Those processes can take up to two to three months.

Councilmember Tossey asked whether the Management Intern position would be a paid position.

Deputy City Administrator Nelson responded it is part of the 2011 budget at \$11/hour from the General Fund.

Councilmember Tossey asked what the pay raises would be.

Deputy City Administrator Nelson answered it is zero percent for 2012.

Councilmember Tossey stated he will oppose the recommendation.

Motion by Mayor Ramsey, seconded by Councilmember Jeffrey, to approve Resolution #11-02-042 to reorganize the Community Development Department.

Further discussion: Councilmember Elvig stated the position as a planner is important. The main reason the City is making the adjustment is because there is not much development going on; however, this is a fairly sharp move around the talent the staff has. He noted the City has a planner that is working well in The COR and as the City starts to grow, he thinks it is an important position and that the position has to take ownership. Councilmember Elvig felt it was a visionary type of position, which requires some history. Councilmember Jeffrey agreed and added that continuity is key in planning and engineering. He encouraged staff to have good documentation and processes so the continuity is not lost. Councilmember McGlone commented the City is doing this because it is necessary and the net result will be better.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Jeffrey, Backous, Elvig, McGlone, and Wise. Voting No: Councilmember Tossey.

7.05: Approve Officer Certification, Release of Land from and Amendment to Ground Lease and Lease Agreement for Ramsey Municipal Center

Deputy City Administrator Nelson reviewed the staff report.

Councilmember Elvig asked if the plat includes all that was discussed prior in regard to the old town hall.

Deputy City Administrator Nelson answered it includes everything to the north of Civic Center Drive.

Motion by Councilmember Elvig, seconded by Councilmember Wise, to approve the Officers Certification, the Resolution #11-02-043 approving the Release of Land from and Amendment to the Ground Lease Agreement and the Release of Land from and Amendment to the Lease Agreement for the Ramsey Municipal Center.

Motion carried. Voting Yes: Mayor Ramsey, Councilmembers Elvig, Wise, Backous, Jeffrey, McGlone, and Tossey. Voting No: None.

8. MAYOR, COUNCIL AND STAFF INPUT

1) Environmental and Business Expo

Councilmember Backous stated the Expo is April 30, 2011. The keynote speaker is Lonnie Dupre, mountain climber, who made a solo attempt to climb Mt. McKinley.

2) Open House – Armstrong Interchange

Councilmember Wise stated the Open House will be held on February 24, 2011, from 4:00 to 6:00 p.m. in the Alexandria Room of City Hall. Public input is sought on the interchange at Armstrong Boulevard and Highway 10. Staff will have drawings of the proposed interchange, and County Engineers will be present for questions.

3) **Boards and Commissions**

Mayor Ramsey reminded that the City is still seeking applications for people to serve on boards and commissions.

4) **Mayor's Town Hall Meeting**

Mayor Ramsey noted the next Mayor's Town Hall meeting is February 17, 2011, at 7:00 p.m. in the Itasca Room. Senator John Bower will be present.

5) **Flower Arrangement**

Deputy City Administrator Nelson requested permission to send flower arrangements for Matt Look's father-in-law who passed away recently, and for Police Chief Way's mother who is in hospice. The request deviates from standard practices. The Council unanimously agreed to send flower arrangements to both individuals.

9. **ADJOURNMENT**

Motion by Councilmember Elvig, seconded by Councilmember Wise, to adjourn the meeting.

Motion carried.

The regular meeting of the City Council adjourned at 8:18 p.m.

Respectfully submitted,

Kurtis G. Ulrich
City Administrator

ATTEST:

Jo Ann M. Thieling
City Clerk

Drafted by Chris Moksnes
TimeSaver Off Site Secretarial, Inc.

Regular Planning Commission

Item #: 6. 1.

Date: 04/07/2011

By: JoAnn Shaw
Community Development

Information

Title:

Appointment of Chairperson and Vice Chairperson.

Background:

In April of each year, the Commissions and Boards appoint officers. Currently, Gary Levine serves as Chairperson and Gary Van Scoy serves as the Vice Chairperson.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Motion to appoint _____ as Chairperson of the Planning Commission.

-and-

Motion to appoint _____ as Vice Chairperson of the Planning Commission.

Form Review

Inbox

Tim Gladhill

Aaron Backman

Form Started By: JoAnn Shaw

Final Approval Date: 03/29/2011

Reviewed By

Tim Gladhill

Aaron Backman

Date

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Started On: 03/17/2011 03:03 PM

Date: 04/07/2011

By: Tim Gladhill
Community Development

Information

Title:

Introduce Ordinance to Amend City Subdivision Code Related to Financial Sureties for Required Improvements

Background:

The City has been asked by a developer to explore opportunities for other forms of surety to ensure that required improvements as defined in City Code are completed in a timely manner consistent with approved plans. Currently, the City's Subdivision Ordinance requires a cash surety or letter of credit in the amount of 125% the cost of required improvements. For projects petitioned under the Minnesota Statute Chapter 429 process, City Code requires a financial guarantee of 20% the cost of the project over the life of the assessment.

Notification:

No notification is required for amendments to City Code Chapter 117 Article II entitled "Subdivisions". City Code Chapter 117 Article II (Subdivisions) and Minnesota Statute Section 462.358 (Subdivision of Land; Dedication) do not require public hearings for amendments to said Article II.

Observations:

Cash sureties or letters of credit are common tools for municipalities to ensure timely completion of required improvements related to approved plats and is a power afforded to cities under Minnesota Statute Section 462.358. This ensures, in the event of default of the developer, that the City has adequate financial resources to complete these necessary public improvements.

The City has been asked to explore alternative ways to provide security that required improvements are completed. One such method suggested was to agree to hold the building code required Certificate of Occupancy until required improvements are completed. Under this scenario, a building would not be occupied until the required improvements were completed. The City could then collect a financial surety in the amount of 125% of the remaining/uncompleted required improvements if a Certificate of Occupancy. It should be noted that the Certificate of Occupancy is legally tied to only the building code and extends only ten (10) feet beyond the foundation of the building. The Building Official has stated this scenario would only be viable if the developer agreed to withhold the Certificate of Occupancy within the Development Agreement/Contract, which would be recorded against the property. This way, the City has a legal avenue to withhold the Certificate of Occupancy for activities not ordinarily part of the Certificate of Occupancy. City Staff's only concern with this scenario is in the event of developer default once a Building Permit has been issued but before a Certificate of Occupancy is issued.

This may be a tool to spur economic development; however the City should take care to ensure that the City is protected in the event of developer default. The City has had to, on occasion, call on these financial sureties even after construction has commenced and certificate of occupancies have been issued within project. The City needs to ensure that the City will not end up being responsible for completing required public improvements without a financial surety to pay for these improvements.

Staff researched a sample of metro cities (Edina, Maple Grove, and Minnetonka) with significant experience dealing with financial sureties. Each of these three communities, based on Staff's interpretation of these codes, required a financial surety of at least the amount of the required improvements until such time the improvements were completed. Staff will be prepared to illustrate impacts to pending developments in the City with different alternative surety scenarios at the meeting. There is a further concern that without the financial surety the

developer of the project may may not require a Certificate of Occupancy for awhile, dragging out the project. This could impact the completion of the City's required improvements, such as roadways and utility trunk systems, that may impact the timing of development for adjacent properties.

Funding Source:

The ordinance is being processed as part of regular staff duties.

Staff Recommendation:

Staff recommends providing feedback as to alternative sureties.

Committee Action:

Motion to introduce/not introduce the ordinance amending the City's subdivision ordinance related to financial sureties.

Attachments

League of Minnesota Cities Subdivision Guide

Proposed Ordinance

Form Review

Inbox

Tim Gladhill (Originator)
Aaron Backman
Form Started By: Tim Gladhill
Final Approval Date: 03/31/2011

Reviewed By

Tim Gladhill
Aaron Backman

Date

03/31/2011 07:58 AM
03/31/2011 09:29 AM
Started On: 03/28/2011 02:42 PM



GOVERNING & MANAGING INFORMATION

Subdivision Guide for Cities

430c1
July 2010

145 UNIVERSITY AVE. WEST
ST. PAUL, MN 55103-2044

PHONE: (651) 281-1200
TOLL FREE: (800) 925-1122
FAX: (651) 281-1299
WEB: WWW.LMC.ORG

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I. Introduction

This memo discusses the framework of municipal subdivision regulation. It provides guidance on subdivision ordinance drafting, adoption, administration, and enforcement.

A. The purpose of subdivision regulations

Minn. Stat. § 462.358
subd. 1a, 2a

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 ordinance. Subdivision regulations specify the standards of the city related to size, location, grading, and improvement of:

Minn. Stat. § 462.358
subd. 2a

- 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.

1. Ensuring safe and functional communities

Subdivision standards keep communities safe and functional in a number of ways. Some typical examples include:

- Preventing the flooding of basements by requiring the subdivider to grade appropriately for the subdivision and install curbs, gutters, and stormwater facilities.
- Preventing car accidents by requiring the subdivider to provide for streets of an appropriate width and design for expected levels of traffic circulation.
- Keeping pedestrians safe by requiring the installation of sidewalks, street lights, and trails.
- Preventing cracked foundations, soil erosion and soil loss, and washed-out streets by requiring the developer to perform soil suitability tests.

2. Ensuring enjoyable and livable communities

Subdivision standards keep communities enjoyable and livable in a number of ways. Some typical examples include:

- Requiring lots to be a suitable size for the houses built upon them and for the provision of yards and side yards that avoid crowding and afford privacy.
- Requiring that streets and facilities in new areas harmonize with and complement existing features.
- Requiring the subdivider to provide parks, trails, and other public places for the enjoyment of residents.
- Requiring the subdivider to meet design standards that create a harmonious and aesthetically pleasing subdivision.

3. Preserve and protect vital natural resources.

Subdivision standards help the city preserve and protect vital natural resources. Some typical examples include:

- Requiring the preservation of trees, woodlands, and significant vegetation during the time of construction, and replanting after construction.
- Setting standards for the location, size, and sealing of wells, septic tanks water and/or sewer systems to avoid pollution problems.
- Preserving and encouraging green and open space by setting standards for lot layout, such as requiring cluster developments.
- Requiring preservation of important wetlands during the grading and construction process.
- Requiring erosion and sediment control during construction, and regulating grading of the development to minimize the potential for soil loss

For each development built within a city on bare ground there are many possibilities for how the end product will look and interact with the surrounding city environs. A 20-acre development can be subdivided a myriad of ways—to feature tightly clustered town homes surrounded by open space; 20 houses on one-acre lots on a straight grid pattern; or a middle ground of 10 houses, featuring cul-de-sacs and a shared park. Street patterns within the same 20 acres may also vary greatly, providing for cul-de-sacs and winding lanes, or broad heavy volume streets connected by feeder streets and alleys.

[Sample Lot Layouts](#)

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 constraints on the subdivision of land and 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 do this by creating too many small lots for sale, developing streets that are cheaper but too narrow and unsafe, and even building 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, which includes all cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington, must adopt subdivision regulations under the Metropolitan Land Planning Act.

[Minn. Stat. §462.358 subd 10](#)

[Minn. Stat. §§ 473.121 subd 2 473.865; 473.859 subd 4](#)

[See Section II-C-2 Metropolitan Council requirements and Metropolitan Planning Act, for more information on the Metropolitan Land Planning Act.](#)

B. Applicability of city subdivision regulations

Generally city subdivision regulations will apply to *most* land divisions a city encounters. The subdivision regulations generally govern all separations of “areas, parcels, or tracts of land” under single ownership into two or more “parcels, tracts, or lots.” The subdivision regulations may even apply to long-term leasehold interests, when the lease agreement necessitates the creation of streets or alleys for residential, commercial, industrial, or mixed use.

1. Certain types of subdivisions exempted by state statute

A few divisions of land are *not* subject to a city’s subdivision authority. The following are excepted under state statute:

- Separations where all the resulting parcels, tracts, lots, or interests will be 20 acres or larger in size and 500 feet in width for residential uses.

[Minn. Stat. § 462.352 subd. 12](#)

[Minn. Stat. § 462.352 subd. 12 \(1\)](#)

Minn. Stat. § 462.352
subd. 12 (2)

Minn. Stat. § 462.352
subd. 12 (3)

Minn. Stat. § 462.352
subd. 12

- Separations where all the resulting parcels, tracts, lots, or interests will be five acres or larger in size for commercial and industrial uses.
- Cemetery lots.
- Court ordered divisions or adjustments.
- Lot consolidation, since subdivision refers only to separation of land.

A developer may still choose to submit these types of divisions to the city's regulatory subdivision process. However, it appears cities are without authority to require them do so. As a result, the city attorney should be consulted on these applications.

2. Extra-territorial application

Minn. Stat. § 462.358
1a; A.G. Op. 59A-32,
(Nov. 4, 1977); A.G.
Op. 59a-32, (Dec. 1,
1972.)

When neighboring towns have not adopted their own subdivision regulations, a city can extend the application of its subdivision regulations to unincorporated territory located within two miles of its limits in any direction. These regulations would supersede any county subdivision regulations. A city cannot extend its subdivision regulations into a neighboring incorporated city, whether or not the neighboring city has adopted subdivision regulations. When two cities that do not share a common border have boundaries less than four miles apart, each city is authorized to control the subdivision of land an equal distance from its boundaries within this area. The city must pass a resolution if it opts to extend the application of its subdivision regulations.

Minn. Stat. §462.36
subd 3

When a city opts to extend its subdivision regulations beyond its borders, the city must file copies of all resolutions approving subdivisions in the extra-territorial area with the clerk of the affected town.

C. Interactions with and differences from the city's zoning ordinance

LMC information
memo, *Planning
Commission Guide*

LMC information
memo, *Zoning Guide
for Cities*

See Section II-C-2
*Metropolitan Council
requirements and the
Metropolitan Land
Planning Act* for
more information on
the Metropolitan Land
Planning Act

Much like a zoning ordinance, a city subdivision ordinance can be a powerful tool to help cities implement their comprehensive plan. Subdivision ordinances may cover similar topics and are often confused with zoning regulations. However, there are important differences between zoning regulation and subdivision regulation. Ideally, a city will have both in place, though this is not required by state statute for cities outside of the metropolitan area.

Subdivision and zoning ordinances are similar in that they seek to regulate private use of land. Zoning regulations and subdivision regulations may both impose regulations as to lot size, location and improvements. Subdivision is different from the more familiar zoning in that it:

- Typically regulates projects that are larger in scope, contemplating eventual multiple owners of the newly created lots.
- Generally is imposed at the initial development phase of a project, whereas zoning is applicable through the development phase of a subdivision and through the life of the completed subdivision.

II. Drafting a subdivision ordinance

Minn. Stat. §§
462.351 to 462.365.

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act.

A. Appropriations and expenditures

Minn. Stat. § 462.353
subd 3

Cities may use any funds not dedicated by law to other purposes for funding the drafting of a subdivision ordinance. Cities may accept grants and gifts to finance planning and land use activities and may contract with federal and state agencies or other public and private agencies for drafting assistance.

B. Typical subdivision ordinance provisions and concepts

Subdivision regulations vary widely from city to city, depending on the development goals and plans of the city. For example, one city may value preservation of agricultural space, while another city values the creation of affordable housing. One city may prefer “cluster” developments, while another prefers large single-owner, one-acre lots. These different values will be reflected in the subdivision regulations the city develops. Despite this, subdivision ordinances have many commonalities related to structure and form. This section discusses some common features of subdivision ordinances.

1. Definitions

[Sample Definitions Ordinance \(Minnetonka\)](#)
[Sample illustrated definition](#)

See LMC information memo, *Zoning Guide for Cities* for more information on definitions in ordinance drafting.

A definition section is essential to any subdivision ordinance. Terms and concepts that may be reasonably subject to more than one interpretation should be explicitly defined in this section. Graphics may also be included to further clarify difficult concepts.

2. Reimbursement for city review costs

[Minn. Stat. § 462.358 subd 2a; Minn. Stat. § 462.353 subd 4](#)

See Section IV-A-2-b *Reimbursement for city review costs* for more information on reimbursement of costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city's costs for review, approval, and inspection of a project.

3. Preliminary/final plat approval process

[Minn. Stat. § 462.358 subd 3b](#)

See Section IV *Subdivision ordinance administration*.

[Sample Preliminary Plat Approval Process Ordinance Excerpt](#)

[Sample Final Plat Approval Process Ordinance Excerpt](#)

Cities must establish a process for review of subdivision applications in the ordinance. Most cities have a two-part process involving preliminary approval and final approval. However, state law does permit cities to combine these two approval processes.

4. Platting

[Minn. Stat. § 462.358 subd 3a; Minn. Stat. § 505.01 subd 3\(f\)](#)

See Section IV- I *Platting requirements*.

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels' lots, blocks, parks, road, and other significant features. Cities may require that all subdivision of land be platted and must require the platting of larger subdivisions.

5. Variances

[Minn. Stat. § 462.358 subd 6](#)

[Sample Variance Ordinance Excerpt](#)

See Section IV-G
Variances

Similar to zoning, cities may issue variances from their subdivision ordinance. Cities may issue variances where an unusual hardship related to the land exists. If a city wishes to allow variances, the process and criteria must be established in the local ordinance. State statute does not set a standard for issuing variances.

6. Design guidelines

[Sample Design Guidelines Ordinance Excerpt](#)

Design guidelines in a subdivision ordinance allow a city to set community standards for issues such as street lighting, street design and width, drainage, and lot sizes and arrangement.

7. Land dedication

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

See Section VI *Land dedication for public facilities*

[Sample land dedication language](#)

Cities may by ordinance require that developers dedicate a reasonable portion of land within the development to public use for such things as streets, utilities, drainage, and parks and recreational facilities.

a. Park dedication fees

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

See Section VI-A *Cash fees in lieu of land dedication*

[Sample park dedication language](#)

In lieu of dedication of land for park, recreational, and open space purposes, cities may require developers to pay to the city cash fees. The city must use the cash fees only to acquire recreational, park, or open space land off-site from the development. The fees cannot be used for ongoing maintenance.

8. Required improvements and development agreements

[Minn. Stat. § 462.358 subd 2a](#)

For more information on improvements see Section V *Public improvement requirements*

For more information on development agreements see Section V-B *Development agreements.*

Cities may condition approval of a subdivision upon the developer's agreement to construct and provide needed public improvements such as streets, utilities, and similar improvements. This agreement should be formalized in a written development agreement.

9. Environmental concerns and natural resource protection

[Sample environmental preservation ordinance](#)

Many cities utilize their subdivision ordinance to preserve trees, soils, wetlands, and other natural features during the development process. Where development requires the removal of natural features, cities may require replacement or other mitigation.

10. Minor subdivisions

[Minn. Stat. § 462.358 subd 3b; Minn. Stat. § 505.03 subd 1](#)

[Sample ordinance and forms for minor subdivisions](#)

See Section IV-H
Minor subdivisions.

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a “minor subdivision.” State statute also allows cities to approve subdivisions without requiring the expense of a formal plat, in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size. This is also sometimes called a “minor subdivision.” Cities may opt to do one or both in their ordinance.

C. Legal standards in drafting subdivision ordinances

City subdivision ordinances may differ greatly from city to city to reflect the concerns and development goals of the city. However, all city subdivision ordinances must conform to legal standards in state and federal statute. In addition, cities’ ordinances must be consistent with state and federal court rulings.

1. Municipal Planning Act

[Minn. Stat. §§ 462.351 to 462.365.](#)

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997.)
Nordmarken v. City of Richfield, 641 N.W.2d 343 (Minn. Ct. App. 2002); *Northshor Experience, Inc. v. City of Duluth, MN*, 442 F.Supp.2d 713 (D.Minn.,2006)
Costley v. Caromin House, Inc., 313 N.W.2d 21 (Minn. 1981; A.G. Op. 59-A-32 (Jan. 25, 2002) .

All city subdivision authority is granted to cities by and subject to the Municipal Planning Act found at Minn. Stat. ch. 462. Ordinances may vary from city to city, but all must comply with both the substantive and procedural requirements contained in the Municipal Planning Act. In addition, cities, including home rule charter cities, cannot adopt local ordinances that contradict the explicit provisions of the Municipal Planning Act.

The Municipal Planning Act contains numerous directives to cities on drafting a subdivision ordinance. These include but are not limited to the following requirements:

[Minn. Stat. § 462.358 subd 2a](#)

- The subdivision regulations must be consistent with the city’s official map and zoning ordinance.

[Minn. Stat. § 462.358 subd 1a](#)

- The subdivision ordinance may provide for different types or classes of subdivisions, but the regulations within each type of class must be uniform.

[Minn. Stat. § 462.358 subd 3a](#)

See Section IV-I
Platting requirements.

- The subdivision ordinance must require plats for subdivisions that create five or more lots that are 2 ½ acres or less in size.

[Minn. Stat. § 462.358 subd 3a](#)

See Section IV-H on
platting requirements

- All plats must conform to the technical requirements found in Minn. Stat. ch. 505.

[Minn. Stat. § 462.358 subd 3b](#)

See Section IV A
Process for adoption,
for more information
on the 120 day rule.

- The subdivision ordinance must require that a complete subdivision application for a preliminary plat be approved or disapproved within 120 days, unless the city and the applicant have agreed to an extension.

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

In addition, land dedication requirements are subject to numerous additional directives as discussed in section VI of this memo.

2. Metropolitan Council requirements and the Metropolitan Land Planning Act

[Minn. Stat. §§ 473.121 subd 2; 473.865; 473.859 subd 4](#)

Metropolitan cities are subject to the Metropolitan Land Planning Act. Metropolitan cities include all cities in the counties of Anoka, Dakota (excluding the city of Northfield), Hennepin (excluding the cities of Hanover and Rockford), Ramsey, Scott (excluding the city of New Prague), and Washington. In drafting a subdivision ordinance, these cities must consult with the Metropolitan Council and meet the council’s additional directions.

[Metropolitan Council
Metropolitan Council
Local Planning
Handbook](#)

[Sample subdivision
ordinances for
metropolitan cities are
available from the
Metropolitan Council.](#)

3. State law provisions related to natural resource protection and floodplains

In cities that contain certain natural resources such as lakes and rivers, or are located in a floodplain, the subdivision ordinance must also conform to the following state standards:

Minn. Stat. § 103F.121; Minn. R. 6120.5000 et al

See MN DNR sample floodplain management ordinances

See also MN DNR for more information and resources on floodplain management

Minn. Stat. § 103F.335

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

Minn. Stat. § 103F.221; Minn. R. 6120.2500 – 3900

See MN DNR sample shoreland management ordinance

See also MN DNR website for more information and resources on shoreland management.

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

- **Floodplain requirements:** State law sets minimum requirements and standards for development in flood plains. City subdivision ordinances must be consistent with state standards in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- **Wild and scenic rivers development requirements:** Cities with shoreland located within the Minnesota Wild and Scenic Rivers System are subject to additional state law restrictions when developing a subdivision ordinance. Subdivision ordinances in these cities must comply with minimum state standards set by the commissioner of Natural Resources.
- **Shoreland development requirements:** For cities that contain shoreland, state regulations control the use and development of its shorelands. City shoreland subdivision regulations must be at least as restrictive as state standards and are subject to the review of the commissioner of Natural Resources.
- **President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land.** When adopting or amending a subdivision ordinance, cities must *consider* restricting new residential, commercial, and industrial development in a manner consistent with the Act’s goal of preserving land from development sprawl. Cities are not required to adopt subdivision practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process *considered* the Act’s stated goals.

D. Obtaining technical assistance in ordinance drafting

City subdivision is regulated by numerous diverse state and federal laws and court cases. As a result, cities should retain the assistance of an experienced planner and attorney when drafting subdivision ordinances. Cities may also contact the League of Minnesota Cities Insurance Trust (LMCIT) for assistance. Resources are posted on the League website, and LMCIT land use attorneys are also available to provide customized information and training to member cities.

LMCIT Land Use Loss Control

III. Subdivision ordinance adoption and amendment

Minn. Stat. §§
462.352 subd 14;
462.358 1a

Cities must adopt and amend subdivision regulations in ordinance form.

A. Process for adoption

Minn. Stat. §§
462.352 subd 14;
462.358 1a

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.

See Handbook, Ch. 7.

State statute does not specify any particular or extraordinary voting requirements for subdivision ordinance adoption or amendment. As a result, an ordinance may be adopted and amended by a simple majority vote of the council. Cities should follow their regular publication requirements.

See Section VI *Land dedication for public facilities* .

Minn. Stat. § 462.358
2b(b)

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 a capital improvement budget *and* a parks and open space plan. The parks and open space plan may be a component of the city comprehensive plan.

Minn. Stat. §462.358
subd 3b

See LMC information memo, *Planning Commission Guide*

State law does not require planning commission review of subdivision ordinances and ordinance amendments prior to their adoption. However, the city may adopt a policy requiring planning commission review if it prefers.

B. Publication

For more information
See Handbook, Ch. 7

See LMC information memo, *Newspaper Publication*

Minn. Stat. § 412.191,
subd. 4.

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

To publish a summary of an ordinance, the city must meet the following requirements:

- The city council makes the determination that publication of the title and a summary of the ordinance would clearly inform the public of the intent and effect of the ordinance.
- The city council approves summary publication by a four-fifths vote of its members.
- The title and summary conform to Minn. Stat. § 331A.01, subd. 10.

Minn. Stat. §
331A.01, subd. 10

- The summary includes notice that a printed copy of the ordinance is available for inspection by any person during regular office hours at the office of the city clerk and at any other location designated by the council or by standard or electronic mail.
- The council approves the text of the summary prior to its publication, and determines that it clearly informs the public of the intent and effect of the ordinance.
- A copy of the entire text of the ordinance is posted in the community library or, if no library exists, in any other public location designated by the council.
- The text of the summary must be published in a type size no smaller than eight-point type.
- Proof of the publication is attached to and filed with the ordinance.

Minn. Stat. §
331A.05, subd. 6.

In home rule charter cities, the charter can impose additional or special requirements for the publication of ordinances.

C. Filing with county recorder

Minn. Stat. § 462.36
subd 1

A certified copy of a subdivision ordinance or ordinance amendment must be filed with the county recorder.

D. Interim ordinances (moratorium)

Minn. Stat. § 462.355,
subd 4.

In order to protect the planning process, a city that is considering adopting or amending a subdivision ordinance may implement an interim ordinance (also known as a moratorium) to prevent subdivisions while the city is considering the issue. Cities must follow the procedures established in state statute to initiate a moratorium.

1. Applicability

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

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.

See Handbook, Ch. 14
for more information
on interim ordinances

2. Procedure for adoption of an interim ordinance

Minn. Stat. § 462.355
subd 4(a)

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

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

The legal justification for the interim ordinance should be stated in the findings of fact when the ordinance is adopted. No notice or hearing is generally necessary before an interim ordinance is enacted.

3. Procedure for interim ordinance extension

Minn. Stat. § 462.355,
subd 4(c)

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

Minn. Stat. § 462.355,
subd 4(c)(3)

- Complete and adopt a comprehensive plan in cities that did not have a comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355,
subd 4(c)(1)

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355,
subd 4(c)(2)

- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355,
subd 4(c)

- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

The required public hearing must be held at least 15 days but not more than 30 days before the expiration of the interim ordinance, and notice of the hearing must be published in the official newspaper at least 10 days before the hearing.

IV. Subdivision ordinance administration

A. The application process: overview

The application review process involves many steps, from submission of an initial application on the appropriate city form, to staff review, until ultimate city council acceptance or denial.

Minn. Stat § 462.358
subd 3b

See Section IV-B-4
120 day rule:
preliminary plat
review.

Timelines are a critical component of the application process. A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery, unless the applicant agrees to an extension.

Similar to the 60-Day Rule in the zoning context, if no action is taken within 120 days, the application will be deemed approved after this time period. Similarly, final plats must be approved in 60 days from the date of application for the final plat. This concept is discussed in more depth in section IV-B-4 below.

1. Application forms and required materials

The city subdivision ordinance must include the city requirements for the content of applications submitted to the city. For example, the city ordinance should require that all applications for approval be submitted on an official city form and also require that application include scale drawings or graphics, legal descriptions, plats and surveys, and all information needed by the city to evaluate the application.

See Sample
Preliminary Plat
Ordinance
Sample Final Plat
Ordinance

2. City staff and the structure for review

Because subdivision applications must be approved within a relatively short time period, it is important that the city have an organized system for reviewing and processing subdivision applications. Generally, this system is composed of staff, city consultants (such as city engineers and attorneys), and city officials, who ensure that subdivision applications are reviewed and answered in a timely manner, and that subdivision ordinance provisions are enforced. Cities may wish to develop forms and checklists to ensure subdivision applications receive the appropriate review and report from city staff and consultants.

Sample Preliminary
Plat Checklist
Sample Final Plat
Checklist

a. Planning commission review

Minn. Stat. §462.358
subd 3b

See LMC information
memo, *Planning
Commission Guide*

State law does not require that subdivision applications be submitted to the city planning commission for review. However, cities may delegate review authority to the planning commission in city ordinance; but statutory cities may not delegate *final* approval or disapproval to the planning commission. Final approvals or disapprovals can only be granted by the city council. Charter cities may delegate this authority if their charter specifically provides for this.

b. Reimbursement for city review costs

Minn. Stat. § 462.358
subd 2a

Sample ordinance for
review costs

City review of a proposed subdivision application may involve significant staff time as well as consulting services of planners, attorneys, engineers, and other professionals. Cities are authorized to seek reimbursement for the city's costs for review, approval, and inspection of a project. Cities must authorize reimbursement in their subdivision ordinance.

For outside consulting services, such as an attorney or engineer, cities must charge a subdivision applicant at the same rate as the city itself is billed. Cities cannot attach an additional premium to consultant rates. When billing for city staff time, cities must bill applicants at an established rate.

For subdivision applications for projects of any size, cities should require that an applicant provide the city with escrowed cash in an amount likely to cover the city's costs for reviewing, approving, and inspecting a project. In the alternative, cities may require some other type of security—such as a letter of credit—in an amount sufficient to guarantee coverage of the city's review costs. These requirements should also be stated in the subdivision ordinance.

i. Verification of plats and surveys

Minn. Stat. § 505.03
subd 3

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning. Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

ii. Fee requirements: accounting/management

Minn. Stat. § 462.353
subd 4 (b)

All cities are required to adopt management and accounting procedures to ensure fees are maintained and used only for the purpose for which they are collected.

iii. Fee ordinances and fee schedules

[Minn. Stat. § 462.353 subd 4 \(c\),\(a\)](#)

[Sample fee schedule](#)

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. Cities that collect an annual cumulative total of \$5,000 or less of land use fees may adopt a fee schedule by ordinance or by resolution after holding a public hearing. Notice must be published at least 10 days before the public hearing. Cities that collect an annual cumulative total in excess of \$5,000 of land use fees may also adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Jan. 1 is set by statute as the standard effective date for changes to fee ordinances. A city may set a different effective date, but the new fee ordinance must not apply to a project if its application for final approval was submitted before the ordinance was adopted.

iv. Fee disputes

[Minn. Stat. § 462.353 subd 4 \(d\)](#)

If a dispute arises over a specific fee imposed by a city related to a specific application, the applicant may appeal the fee to district court. The applicant must provide notice to the city of the appeal by certified letter and place the disputed fee in an escrow account. After notice and deposit, the application must be processed as if the fee had been paid. The appeal must be brought within 60 days after approval of application and deposit of the fee into escrow.

B. Preliminary plat review

[Minn. Stat. § 462.358 3b](#)

[Minn. Stat. § 462.358 3b; Minn. Stat. § 505.03 subd 1](#)

See Section IV-H
Minor subdivisions

[Sample ordinance on application requirements](#)

The city subdivision ordinance must establish the process for review of applications. Cities have discretion in determining the process that they would like to use. However, the subdivision statute generally requires cities to follow a two-step process in the administration of city subdivision regulations. First, the landowner applies for preliminary plat approval, and then 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.

Generally for preliminary plat approval, the applicant will submit to the city a plat and various concept drawings as required by city ordinance. Some cities require applicants to meet with staff for a “pre-application” review, prior to the filing of the preliminary plat application. This internal review allows staff to inform applicants of the city’s expectations and ordinance requirements.

Sample preliminary plat ordinance

It is important to note that a city has the most discretion in evaluating the application against its ordinance requirements during the preliminary approval stage. This is the time to impose conditions and address any and all concerns the application may generate. The term “preliminary approval” can be misleading, since it implies that the review is cursory or limited in scope. This is not the case in the subdivision context.

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 (Minn.Ct. App., April 14, 2009) (unpublished) .

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).

1. Conditional approval: Preliminary plats

Minn. Stat. § 462.358 2a; Minn. Stat. § 462.358 3b

A city may approve a preliminary plat along with conditions that must be satisfied for final plat approval. Conditions for how the final subdivision design will meet ordinance provisions often are quite specific. For example:

- Requiring the developer to reduce the number of lots and provide for a greater wetland buffer in the final plat.
- Requiring the developer to add sidewalks and develop a trail plan in consultation with city staff.
- If any public improvements are to be installed by the developer, requiring a development agreement between the city and the applicant.

See Section V-B *Development agreements*.

Conditional approvals related to required public improvements and development agreements are discussed in more detail V.

2. Partial approval: Preliminary plats

Minn. Stat. § 462.358 subd 3b

Cities may also provide for partial approval of a preliminary plat application. For example, where a proposed subdivision includes multiple phases or is otherwise large in scope, the city may grant preliminary approval to some parts of an application, but deny others.

3. Public hearing requirements: Preliminary plats

Minn. Stat. § 462.358 subd 3b

LMCIT risk management memo, *Public Hearings*

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.

4. 120-Day Rule: Preliminary plats

Minn. Stat § 462.358
subd 3b

Minn. Stat § 15.99

*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)

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. By its terms, the 60-Day Rule found at Minn. Stat. § 15.99 does not apply to city subdivisions). 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 in section IV-C of this memo.

5. Review of preliminary plats bordering trunk highways, county and state roads, or highways

a. Trunk highways

Minn. Stat. § 505.03
subd 2(a)

State law mandates special procedures for when a city receives a preliminary plat application for land that:

- Abuts an existing or established trunk highway or state rail property.
- Abuts a proposed trunk highway or state rail property that has been designated by a centerline order filed with the county clerk.

The city must refer these applications to the commissioner of the Minnesota Department of Transportation (MnDOT) for written comments and recommendations. Plats must be submitted to MnDOT at least 30 days prior to the city taking final action on the preliminary plat application. After receiving a plat application for the city, MnDOT has 30 days to respond. The city may not take action on the preliminary plat until comments have been received or 30 days have elapsed.

*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)

The statute requiring the referral to MnDOT does not provide for tolling of the 120-Day Rule, while MnDOT considers the application. The general tolling provisions of the 60-Day Rule for issues related to zoning *do not apply*. As a result, the city must complete its review of the preliminary application, including any MnDOT review, within 120 days, unless an extension is agreed to by the applicant.

Minn. Stat. 15.99
subd 2 (a)

b. County roads, highways, and state-aid highways

Minn. Stat. § 505.03
subd 2(b)

Similar requirements exist for when a preliminary plat includes land that borders an existing or proposed county road, highway, or county state-aid highway. These plats must be submitted to the county engineer for review within five days of receipt by the city for written comments and findings.

Minn. Stat. § 505.03
subd 2(b),(c)

The county engineer has 30 days to provide written comments on the plat. The city may not take final action on the preliminary plat until comments have been received or 30 days have elapsed. The county engineer's review must be limited to commenting on factors related to the county's officially adopted guidelines for such reviews.

When the county engineer has submitted comments, the city must notify the county of its eventual final approval of a preliminary plat within 10 days of such approval. Along with this notice, the city must submit a statement that explains the city's response to the county engineer's written concerns. Where the preliminary plat was not amended or changed to address the county engineer's concerns, state law requires further consultation between the two entities. Prior to approval of the final plat, representatives of the city and county must meet to discuss their differences and agree on whether changes to the plat are appropriate prior to final approval. In situations where this conference is necessary, the city should make county approval a formal condition to final plat approval.

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)

The statute requiring the referral to county engineer does not provide for tolling of the 120-Day Rule, while the county considers the application. In addition, the general tolling provisions of the 60-Day Rule for issues related to zoning do not apply, because the 60-Day Rule statute specifically excepts from its provisions municipal decisions on subdivisions subject to the 120-day requirement. As a result, the city must complete its review of the preliminary application, including any county review, within 120 days, unless an extension is agreed to by the applicant.

Minn. Stat. § 15.99
subd 2 (a)

c. Trunk highways, county roads, and highways

Minn. Stat. § 505.03
subd 2(b)

When a preliminary plat abuts upon a trunk highway or state rail property and includes county roads, the city must follow both processes detailed above and submit a copy of the application to both MnDOT and the county engineer.

d. Required information for submission to MnDOT and the county engineer

Minn. Stat. § 505.03
subd 2(d)

Submissions to MnDOT or the county engineer must include both a legible preliminary drawing or print of the proposed preliminary plat and an attached written statement describing:

- The outlet for and means of disposal of surface waters from the platted area.

- The land use designation or zoning category of the proposed platted area.
- The locations of ingress and egress to the proposed platted area.
- A preliminary site plan for the proposed platted area, with dimensions to scale, authenticated by a registered engineer or land surveyor, showing the existing or proposed state highway, county road, or county highway and all existing and proposed rights-of-way, easements, general lot layouts, and lot dimensions.

When a subdivision application is finally approved and recorded, the city must file with the plat, in the office of the county recorder or registrar of titles, a certificate or other evidence showing submission of the preliminary plat to the commissioner or county highway engineer as required by law.

C. Final plat review

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).

Minn. Stat. § 462.358
subd 3b

Sample final plat
ordinance

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* (Minn. Ct. App., April 14, 2009) (unpublished)

1. Public hearing requirements: Final plats

Unlike preliminary plat approval, there is no required public hearing on the final plat.

2. 60-Day Rule: Final plats

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.

Minn. Stat. § 462.358
subd 3b

Sample final plat
ordinance

D. Standard of review for preliminary and final plats

State, by Rochester Ass'n of Neighborhoods v. City of Rochester, 268 N.W.2d 885 (Minn. 1978); *Henning v. Village of Prior Lake*, 435 N.W.2d 627 (Minn. Ct. App., 1989); *VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503 (Minn., 1983)

When drafting and adopting a subdivision ordinance, cities have a lot of discretion in choosing their language and setting design standards. When drafting and adopting a subdivision ordinance, the city is said to be utilizing its legislative (or law-making) authority. When using its legislative authority, the only limits on the city's authority is that action must be constitutional, rational, and in some way related to protecting the health, safety, and welfare of the public. This is known as the "rational basis standard" and it is generally a relatively easy standard for cities to meet.

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

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant's failure to meet standards established in the ordinance. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

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

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

Kottschade v. City of Rochester, 537 N.W.2d 301 (Minn. Ct. App., 1995).

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

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

E. Importance of documentation of city decisions on applications

LMCIT risk management memos, *The Necessity of Adequate Findings: Reasons to Support Municipal Land Use Decisions*, and *Land Use Findings of Fact*

City decisions on subdivision applications, just like zoning decisions, may result in a lawsuit challenging the city's approval or denial of the application. Documentation of the city's basis for denials and approvals is essential to defending the city's decision in a court of law.

F. Effect of Approval

Minn. Stat. § 462.358 subd 3c

For a period of one year after approval of a preliminary plat and two years after final approval of a plat, amendments to the city's comprehensive plan and official controls cannot alter or affect the approved development's:

- Use
- Development density
- Lot size
- Lot layout
- Dedications or platting required or permitted by the approved plat.

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).

Cities and developers may mutually agree to alterations within these time periods. Cities may also agree by resolution or written agreement to extend these one- and two-year timelines for planned and staged developments. Once a city has agreed to an extension, it may not unilaterally revoke the extension. Cities may place conditions on such extensions.

Henning v. Village of Prior Lake, 435 N.W.2d 627 (Minn. Ct. App., 1989)

Where a subdivision has been granted preliminary approval, but final approval has not been applied for in one year, or where final approval is granted, but the development is not completed within two years, the city may request that a developer submit a new subdivision application. Cities may not request a new application where:

- Substantial development and investment have occurred in reliance on the approved preliminary or final plat.
- The developer will suffer substantial financial damage as a result of the requirement to submit a new application.

In these instances, a city may still require the developer to submit to any applicable conditions and requirements as a prerequisite to an extension.

See Section III-D *Interim ordinances*.

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.

G. Variances

Minn. Stat. § 462.358
subd 6

*VanLandschoot v.
City of Mendota
Heights*, 336 N.W.2d
503 (Minn.,1983)

[Sample variance
ordinance](#)

Cities may grant variances from their subdivision ordinance requirements, where the regulations would create an unusual hardship on the land. In order to grant variances, cities must first adopt a procedure for granting variances, with detailed standards in the city subdivision ordinance. State law does not explicitly set standards for granting variances.

H. Minor subdivisions

Minn. Stat. § 462.358
subd 3b ; Minn. Stat.
§ 505.03 subd 1

[Sample ordinance and
forms for minor
subdivisions](#)

State statute allows cities to adopt ordinance provisions that consolidate the preliminary and final plat approval process. Sometimes this is referred to as a “minor subdivision.” State statute also allows cities to approve subdivisions without requiring the expense of a formal plat in instances where the subdivision of land results in less than five lots that are more than 2 ½ acres in size. This is also sometimes called a “minor subdivision.” Cities may opt to do one or both in their ordinance, and establish procedures for each.

Minn. Stat. § 505.03;
Minn. Stat. § 505.021
subd 9 (b)

Normally all plats are subject to city council review. In addition, normally, all plats are required to contain certification of council approval. However, when a city offers a “minor subdivision” option, it may designate by resolution or ordinance a local official, such as the city clerk or zoning administrator, to approve plats administratively without full council review. Some cities choose this option for increasing the ease and speed of city administration related to minor subdivisions.

I. Platting requirements

Minn. Stat. § 462.358
subd 13; Minn. Stat.
§505.01 subd 3(f)

A plat is a scale drawing of one or more parcels of land that shows the location and boundaries of the parcels’ lots, blocks, parks, roads, and other significant features.

Minn. Stat. §462.358
subd 3a; Minn. Stat. §
505.03 subd 1

City ordinance must require that all subdivisions creating five or more parcels that are 2 ½ acres or less in size be platted. In addition, the city can also choose to require that *all* subdivisions of land creating lots or parcels be platted, regardless of number or size.

Minn. Stat. § 505.03
subd 1

Whether or not the city has adopted subdivision regulations, all plats in cities with populations over 5,000 must be presented to the city council for approval. Home rule charter cities may delegate this review to a municipal officer or body other than the city council.

Minn. Stat. § 505.03
subd 1

When a plat only depicts a minor subdivision, as defined in city ordinance, or depicts only existing parcels, the city may appoint a city official, such as the city clerk or administrator, to approve such plats.

Plats must comply with many technical requirements found in Minn. Stat. ch. 505. Among other things chapter 505 requires:

Minn. Stat. § 505.021
subd 9

- Plats must be certified by a land surveyor who both surveyed the land being platted and prepared the plat or supervised preparation of the plat.
- Plats must contain a plat name that does not duplicate or is not similar to any other plat name within the county.
- Plats must be signed by all fee owners, contract for deed vendees, and mortgage holders of record.

In addition, plats must meet various technical requirements related to paper size, scale, and delineation of land features.

1. Verification of plats and surveys

Minn. Stat. § 505.03
subd 3

When a city requires a plat to be submitted along with a subdivision application, cities have additional authority to seek reimbursement for city review costs. Cities are authorized to employ qualified persons, such as a surveyor, to check and verify surveys and plats and to determine the suitability of the plat from the standpoint of community planning. Cities may require the applicant to reimburse the city for such services. When the city uses a city employee to perform these reviews, the city may charge for these services based upon the employee's regular wage.

J. Certification of taxes paid

Minn. Stat. § 462.353
subd 5

Cities may require, as part of their subdivision ordinance, that an applicant certify that there are no delinquent taxes, special assessments, penalties, interest, or municipal utility fees due on any parcel of land included in the subdivision application. In addition, cities may condition approval of a subdivision upon payment of all moneys due.

K. Recording and filing of approved plats

1. County recorder

Minn. Stat. § 505.04

Once approved, all final plats must be certified as approved by the city and recorded with the county recorder.

2. Neighboring communities

Minn. Stat. § 462.36
subd 3

Minn. Stat. § 462.358
subd 1a

See Section I-B-2
*Extra territorial
application.*

Copies of resolutions approving subdivision plats within a city, but contiguous with another city or town must be filed with the governing body of the contiguous city or town. When a city has opted to enforce its subdivision regulations extra-territorially within a town, it must file copies of approved subdivisions in the regulated area with the neighboring town.

V. Public improvement requirements

Minn. Stat. § 462.358
subd 2a
Sample public
improvement
ordinance

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
- Similar improvements

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:

- 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.

See Section V – B
*Development
agreements*

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. Cities may prefer to install improvements on their own because it gives the city direct control and supervision of a public improvement project, rather than simply inspecting the work of a third-party developer. However, there are some risks to this approach that should be considered by the city.

Specifically, when a city installs significant public improvements in a new development, it typically expects to recoup its costs through special assessments from buyers of the subdivided parcels in the development once the project is completed. However, the city might experience unexpected delays in cost recovery from assessments if:

- Public improvements are installed, but the developer does not finish the project (likely due to insolvency or other financial issues).
- Public improvements are installed and the project is completed, however, the subdivided lots do not sell and sit empty (due to market factors on a nationwide or local scale).

Attempts to recover the city's costs in these types of scenarios may result in legal fees and other unexpected administrative costs for the city. In addition, if the city financed the public improvements through bonds, the city's bond rating may be affected while the special assessments remain unpaid and the bonds are outstanding.

Cities that require the developer to install improvements may still exercise a high degree of control over the installation and construction of the public improvements. Cities may:

- Develop detailed specifications for each type of improvement required by the city.
- Hire professional engineers to review and inspect each phase of installation or construction of a required public improvement (these costs can be recouped from the developer).
- Require the developer to provide the city with a cash deposit, bond, letter of credit, or other financial security that will allow the city to finish or fix a failed or flawed public improvement with cash on hand (rather than needing to bond or use city reserves).
- Require the developer to enter into a development agreement that includes quality controls and addresses any unique issues related to the particular public improvement project.
- Require completion of all needed public improvements prior to the issuance of any building permits for construction on parcels within the development.

Because cities may exercise such a high degree of control over public improvements installed by a developer, there is limited risk for the city in requiring the developer to construct and install public improvements.

A. Release and return of financial securities

[Minn. Stat. § 462.358 subd 2a](#)

As discussed, the city may require a subdivision applicant to provide some type of financial security for the purpose of reimbursing the city for its costs related to review, approval, and inspection of a specific project. There is a specific statutory process regulating the release and return of developer financial securities.

A developer who has completed a project for which there are still outstanding financial securities may request that its security be released and returned by sending a certified letter to the city.

When the city receives a letter requesting release, the city must either (1) release and return to the applicant any outstanding financial securities within 30 days; or (2) provide notice to the developer, within seven days of receipt of the certified letter, that all required conditions for approval have not been met, and provide a list of the specific conditions which have not been completed.

If the city does not release and return the securities within 30 days, or provide notice of the reasons why the security is not being released, state statute requires the city to pay any interest accrued on the security to the applicant.

B. Development agreements

[Minn. Stat. §462.358](#)
[Sample ordinance language on development agreements](#)

The subdivision ordinance may provide that the city may 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.

[Sample development agreement ordinance](#)

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. 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). A typical development agreement will:

- Contain a detailed legal description of the property governed by the development agreement.
- Set specifications and plans related to any required infrastructure improvements (for example, streets and roads to be installed in the development).
- Set timelines and deadlines related to any required infrastructure improvements.
- Provide for city access to the development site and require all necessary inspections.
- Detail the city's requirements for financial securities related to any infrastructure improvements.
- Set procedure for city final inspection and acceptance of required infrastructure improvements.
- Set expectations for erosion control, grading, and environmental/tree preservation during development and construction.
- Require the developer to clean up and remove dirt and debris from the development upon completion of the development.

- Require payment of park and trail dedication fees and sewer/water access charges.
- Provide legal descriptions for any dedicated land and require the exchange of deeds or granting of easements as necessary.
- Require the developer to warrant work related to public infrastructure for a period of years after the development. This usually includes streets and utilities, but may also include sod, plantings, play equipment, and required tree plantings.
- Require the developer to maintain liability insurance in an appropriate amount during the development and construction period.
- Require the developer to hold the city harmless and indemnify the city from all third-party claims related to the development.
- Set provisions for dealing with any potential default by the developer under the agreement. For example, allowing the city to step in and complete all agreed-to improvements, using money from a letter of credit or other financial security.
- Prohibit the issuance of building permits or occupation of any structures within a development until all public infrastructure is completed and accepted by the city.

A development agreement prepared by the city attorney is often the most efficient and best method to ensure that the city's regulations are followed by a developer. In addition, a development agreement can provide the city with a measure of protection against the threat of developer insolvency or bankruptcy. Finally, a well written agreement (with attention to issues of financial security) can protect the city from developers who fail to complete public improvements or abide by city requirements.

VI. Land dedication for public facilities

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:

[Minn. Stat. § 462.358 subd 2b](#); *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)

[Sample land dedication ordinance](#)

- Streets, roads and alleys
- Water, sewer, and similar facilities
- Gas, electric, and similar facilities
- Stormwater drainage and hold areas or ponds
- Parks, recreational facilities, and playgrounds
- Trails and sidewalks
- Wetlands and wetland preservation
- Open space

Prior to adopting dedication requirements in a subdivision ordinance, the city must first adopt a capitol improvement budget and adopt a parks and open space plan. The plan may be a component of the city comprehensive plan.

When the city requires land to be dedicated within a specific subdivision, it must reasonably 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.

[Minn. Stat. § 462.358 subd 2b \(e\)](#) ; Minn. Stat. § 462.358 subd 2c (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 2c \(c\)](#) ; *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 2b \(d\)](#)

The city must also give due consideration to whether 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, common areas, or other facilities within the development.

Minn. Stat. § 505.01
subd 2; Minn. Stat. §
505.01 subd 1

A dedication of land to the public is usually reflected on the plat document or in an easement or other deed document. When park land is dedicated to the public, the dedication conveys complete ownership to the city (known as “fee title”). Land for streets, roads, alleys, trails, and other public ways dedicated to the public conveys an easement only to the city for the dedicated purposes. Land dedicated for all other uses is conveyed to the city “in trust” for the dedicated use.

Minn. Stat. § 462.358
subd 2b (i)

Land which has been previously subdivided and from which a park dedication has been received, is exempted by state statute from further dedication requirements if a re-subdivision creates the same number of lots. Where new lots are created, a park dedication fee may be applied only to the net increase in lots.

A. Cash payments in lieu of land dedication

Minn. Stat. § 462.358
subd 2b(c)

[Sample ordinance on
park and trail fees](#)

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.

Minn. Stat § 462.358
subd 2b(d)

In collecting park dedication fees, the city must give due consideration the park and recreational facilities that the applicant already proposes to incorporate into the development for public use. For example, if the proposed development already includes park and trail facilities for residents, it may be more difficult to justify an additional cash fee.

1. Setting park dedication fees

Minn. Stat. § 462.358
subd 2b(c)

Park dedication fees must be established by ordinance or a fee schedule that meets the requirements of state statute discussed in Section VI-A-2. Fees must be set based upon the average fair market value of land within the area:

- That is unplatted.
- For which park fees have not been paid.
- That is to be served at the time of final approval or will be served under the city’s comprehensive plan by city sanitary sewer and water.

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.

2. Fee schedules

Minn. Stat. §462.353
subd 4a

See LMC information
memo, *Newspaper
Publication*

Park dedication fees may generally be imposed only by ordinance. However, cities that collect less than \$5,000 per year in land use and development fees (this includes all subdivision and zoning fees) may use a fee schedule adopted by city resolution. Prior to adoption of the resolution, the city must hold a public hearing on the fee schedule with 10 days published notice. Cities that collect over \$5,000 in land use fees per year may also use a fee schedule. However, the fee schedule must be adopted in ordinance form, following a public hearing for which there has been 10 days published notice.

3. Fee accounting and disputes

Minn. Stat. §462.358
subd 2b (f), (g)

Park dedication fees must be placed in a special, segregated fund. Park dedication fees can only be used for the acquisition, development, and improvement of parks, recreational facilities, playgrounds, trails, wetland, and open space based upon the city-approved park systems plan. Park dedication fees cannot be used for the city operational or maintenance costs, such as lawn mowing or garbage pick-up.

a. Fee disputes

Minn. Stat. § 462.353
subd 4 (d); Minn. Stat.
§ 462.358 subd 2c(b)

Cities may not condition approval of a subdivision application upon a waiver of applicant rights to challenge city fees in a law suit.

Minn. Stat. § 462.358
subd 2c(c)

An applicant who disputes a park dedication fee, may request that the application be processed as if the fee had been paid. An applicant who disputes a fee, but still wishes to have the application processed must do all of the following:

- Provide written notice to the city of his or her dispute over the city's fee.
- Place in escrow for the city the disputed fee amount.
- File an appeal in court of the city's fee using the procedures specified in statute within 60 days of the approval/denial of the application.

Minn. Stat. § 462.361

If an applicant does not appeal the fee by filing suit in a court of law within 60 days following approval/denial or if the applicant appeals but does not prevail in his or her request to have the fee overturned, the fee held in the escrow account must be paid to the city.

VII. Subdivision ordinance enforcement

Cities have numerous strong tools to enforce the requirements of their subdivision ordinances. Some of these tools are discussed here.

A. Sellers and buyers disclosure requirements

Minn. Stat. § 462.358
subd 4a

Whenever a landowner seeks to convey land (through a metes and bounds description or in reference to a plat) that has not previously been filed or recorded, state law requires the seller to make certain disclosures to protect buyers from illegal subdivisions. If the newly recorded land is the result of a subdivision, the seller must attach one of the following to the instrument of conveyance:

- A recordable certification by the clerk of the municipality that the city's subdivision regulations do not apply, or that the subdivision has been approved by the governing body, or that the restrictions on the division of taxes and filing and recording have been waived by resolution of the governing body of the municipality.
- A statement which names and identifies the location of the appropriate municipal offices and advises the grantee that municipal subdivision and zoning regulations may restrict the use or restrict or prohibit the development of the parcel, or construction on it, and that the division of taxes and the filing or recording of the conveyance may be prohibited without prior recordable certification of approval, non-applicability, or waiver from the municipality.

See Section VII-B-2
*City option to grant
waivers for
information on
waivers*

A buyer who purchases illegally subdivided land may bring a lawsuit against the seller alleging misrepresentation of or the failure to disclose material facts under this statute. A buyer with a successful lawsuit may be awarded damages, reasonable costs and fees (including attorney fees), and punitive damages up to 5 percent of the purchase price of the land.

B. Restrictions on filing and recording conveyances

Minn. Stat. § 462.358
subd 4b;
A.G. Op. 373-B-9
(Feb. 1, 1977)

In a city that has adopted and recorded subdivision regulations with the county recorder, no conveyance of land to which the regulations are applicable may be filed or recorded if the conveyance does not demonstrate conformance to the regulations. A few exceptions to this law apply to:

- Some transactions entered into before 1945, but not previously recorded.
- Single parcels of commercial or industrial land of not less than five acres and having a width of not less than 300 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than five acres in area or 300 feet in width.

- Single parcels of residential or agricultural land of not less than 20 acres and having a width of not less than 500 feet where the conveyance does not result in the division of the parcel into two or more lots or parcels, any one of which is less than 20 acres in area or 500 feet in width.

1. Enforcement

Minn. Stat. § 462.358
subd 4b (d), (e)

Any owner or agent of the owner of land who conveys a lot or parcel in violation of this state law may be required to pay to the city a penalty of not less than \$100 for each lot or parcel so conveyed. In addition, the city may ask a court to stop or prevent the conveyance or may recover the penalty by filing suit in court.

2. City option to grant waivers

Minn. Stat. § 462.358
subd 4b (c)

Cities may opt to waive enforcement of this statute in instances where the city determines that enforcing this prohibition on recording will create an unnecessary hardship, and failure to comply does not interfere with the purpose of the subdivision regulations.

The city may waive this statute by adoption of a resolution, and the conveyance may then be filed or recorded.

C. Civil remedies

Minn. Stat. § 462.358
subd 2a

City ordinance provisions may allow the city to deny issuance of permits and approvals for any tracts, lots, or parcels for which subdivision approval has not been obtained. This provision applies not only to subdivision permits, but building, occupancy, and zoning permits as well.

Minn. Stat. § 462.362

A city may also enforce its subdivision ordinance by requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court.

D. Criminal remedies

Minn. Stat. § 462.362

Minn. Stat. § 169.89,
subd. 2.

Minn. Stat. §§ 609.02,
subds. 3, 4a;
609.0332; 609.034.

See *Handbook, Ch. 7* for information on prosecution responsibilities for violations of local ordinances

Cities may provide for criminal penalties for violation of the city subdivision 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.

ORDINANCE #11-__

**CITY OF RAMSEY
ANOKA COUNTY STATE OF MINNESOTA**

AN AMENDMENT TO CHAPTER 117 WHICH IS KNOWN AS THE ZONING AND SUBDIVISION OF LAND CHAPTER OF THE CITY CODE OF RAMSEY, MINNESOTA.

AN ORDINANCE AMENDING ARTICLE III OF CHAPTER 117 OF THE CITY CODE OF RAMSEY, MINNESOTA.

The City of Ramsey ordains:

SECTION 1. AMENDMENT

Chapter 117, Article III of Ramsey City Code shall be amended to include the following:

Section 117-6.25 Council Discretion to Set Financial Guarantees.

Notwithstanding anything to the contrary in Article II, Sections 117-615 through 117-624, the City Council may waive any subdivider or developer required financial security or length of special assessment repayment requirements described in said Article III in lieu of alternative financial security or special assessment repayment requirements that the City Council finds to be adequate to guarantee payment of any subdivider or developer obligations required in said Article III.

SECTION 2. SUMMARY

The following official summary of Ordinance #11-__ has been approved by the City Council of the City of Ramsey as clearly informing the public of the intent and effect of the Ordinance.

It is the intent of this Ordinance to amend the Article III of the Ramsey City Code to provide City Council discretion to set financial guarantees.

SECTION 3. EFFECTIVE DATE

The effective date of this ordinance is thirty (30) days after its passage and publication, subject to City Charter Section 3.9.

Adopted by the Ramsey City Council the ___ day of _____, 2011.

Mayor

ATTEST:

City Administrator

Introduction Date: _____

Posting Dates: _____

Adoption Date: _____

Publication Date: _____

Effective Date: _____

Regular Planning Commission

Item #: 6.3.

Date: 04/07/2011

By: Tim Gladhill
Community Development

Information

Title:

Presentation of the Basics of Planning and Zoning

Background:

With the appointment of three (3) new Planning Commissioners/Board of Adjustment members, Staff has prepared a workshop discussion on the basics of planning and zoning to bring new members up to speed and provide a refresher course for existing members.

The workshop will follow the traditional flow of long-range planning beginning with Comprehensive Plan basics, Zoning Code and Map implementation, and administering/reviewing land use applications. The workshop will use the "Zoning Guide for Cities" from the League of Minnesota Cities and the "Local Planning Handbook" from the Metropolitan Council.

Notification:

Observations:

Funding Source:

Preparation is being handled as part of regular staff duties.

Staff Recommendation:

Committee Action:

For informational purposes only.

Attachments

Zoning Guide for Cities

Local Planning Handbook

Form Review

Inbox

Tim Gladhill (Originator)
Aaron Backman
Form Started By: Tim Gladhill
Final Approval Date: 03/29/2011

Reviewed By

Tim Gladhill
Aaron Backman

Date

03/29/2011 08:44 AM
03/29/2011 10:12 AM
Started On: 03/07/2011 04:03 PM



GOVERNING & MANAGING INFORMATION

Zoning Guide for Cities

600A1A
October 2010

145 UNIVERSITY AVE. WEST
ST. PAUL, MN 55103-2044

PHONE: (651) 281-1200
TOLL FREE: (800) 925-1122
FAX: (651) 281-1299
WEB: WWW.LMC.ORG

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I. Introduction

This memo discusses the framework of municipal zoning. It provides guidance on zoning ordinance drafting, adoption, administration and enforcement. Finally, this memo introduces, in brief, other land use controls available to cities that may complement or be used separately from zoning controls.

A. The purpose of zoning

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

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

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

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

- Building location, height, width, bulk
- Type of building foundation
- Number of stories, size of buildings and other structures
- The percentage of lot space which may be occupied
- The size of yards and other open spaces
- The density and distribution of population
- Soil, water supply conservation

[Minn. Stat. § 462.351](#)

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

[Minn. Stat. § 462.357, subd. 1](#)

[Sample Zoning District Section](#)

[Minn. Stat. § 462.357, subd. 1](#)

- Conservation of shore lands
- Access to direct sunlight for solar energy systems
- Flood control

B. Legal authority to zone

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

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

Minn. Stat. § 462.352, subd. 2

Minn. Stat. § 462.351

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

Minn. Stat. § 473.851

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

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

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

C. Role of comprehensive planning in zoning ordinance adoption

Minn. Stat. § 462.351

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

1. Comprehensive planning

See LMC
information memo,
*Planning
Commission Guide*

Minn. Stat. § 462.353;
*Roselawn Cemetery v.
City of Roseville*, 689
N.W. 2d 254 (Minn.
Ct. App. 2004).

Minn. Stat. § 462.352,
subd. 5

Minn. Stat. § 462.355,
subd. 1a; Minn. Stat. §
473.121, subd. 2,
Minn. Stat. § 473.864,
subd. 2; *Amcon Corp.
v. City of Eagan*, 348
N.W.2d 66 (Minn.
1984).

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

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

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

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

a. Reasons to adopt a comprehensive plan

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

See LMC
information memo,
*Planning
Commission Guide*

For more information
on Comprehensive
Planning see *Under
Construction* by MN
Department of
Administration

First, the comprehensive planning process helps a city develop a plan for creating and maintaining a desirable environment and safe and healthy community. Once a plan is adopted, it guides local officials in making their day to day decisions and becomes a factor in their decision making process.

Concept Properties, LLP v. City of Minnetrista, 694 N.W.2d 804 (Minn. Ct. App. 2005); *Larson v. Washington County*, 387 N.W.2d 902 (Minn. Ct. App. 1986).

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

b. Relation of the comprehensive plan to zoning

See LMC information memo, *Planning Commission Guide*

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

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

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

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

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

II. Drafting a zoning ordinance

Minn. Stat. § 462.357, subd. 1

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

A. Typical zoning ordinance provisions and concepts

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

1. The administrative section

Sample Definitions
Section

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

2. The performance standards section

Sample Performance
Standards Section

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

3. The zoning district section

Sample Zoning
District Section

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

a. Use designations

Sample Permitted and
Conditional Uses

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

- **Permitted Uses:** Uses that are allowed in a district as a matter of right without further need for review or approval of the city
- **Prohibited Uses:** Uses that are not permitted in a district under any circumstances. An explicit listing of prohibited uses is rare. Many ordinances will simply provide that any uses not specifically listed are deemed prohibited.
- **Conditional Uses:** Uses that are permitted, after approval of the city, if conditions listed in the ordinance are met. Some zoning ordinances use the term “special use” instead of conditional use. The Municipal Land Use Planning Act does not recognize special use permits, and the courts would likely apply the same requirements for their issuance as those for conditional uses specified above.

Minn. Stat. §
462.3595

- **Interim Uses:** Uses that are permitted for a limited amount of time (contain a sunset provision), after approval of the city, if conditions listed in the ordinance are met.
- **Accessory Uses:** Uses that are permitted or conditionally permitted to serve a permitted or conditionally permitted use. Generally the accessory use will not be permitted absent the primary use. For example, a tool shed is a standard accessory use in a residential zone.

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

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

4. **Additional provisions**

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

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

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

- **Mixed use or hybrid districts.** Districts that do not neatly meet the traditional district categories of residential, commercial or industrial use, but may contain a blend of uses. For example, a “downtown mixed use district” that features a blend of commercial uses and multifamily residences.
- **Planned Use Development (PUD) or cluster development:** A development of contiguous land area that contains developed clusters intermixed with green space or commercial or public development. Often the cluster development allows greater density than normally permitted in the development, in exchange for some other benefit, such as green space or open space.

- **Overlay districts:** A district that is developed to be imposed over or “overlay” one or more existing zoning districts, which impose additional zoning requirements. Overlay districts may be developed with a specific land area in mind or they may be developed to “float” until they are anchored to a suitable development proposal. In some cities, overlay districts may be structured as conditional uses.

5. Natural resource protection and flood plain provisions

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

- **Floodplain requirements:** Floodplain management ordinances are required by state law. Flood plain ordinances regulate the use of land in the floodplain in order to preserve the capacity of the floodplain to carry and discharge regional floods and minimize flood hazards.
- **Wild and scenic rivers development requirements:** Wild and Scenic Rivers development ordinances are required by state law for cities that have shore land located within the Minnesota Wild and Scenic Rivers System. These ordinances must comply with state standards set by the Commissioner of Natural Resources.
- **Shoreland development requirements:** For cities that contain shore land, these zoning regulations control the use and development of its shorelands. City shore land regulations must be at least as restrictive as State standards and are subject to the review of the Commissioner of Natural Resources.
- **President Theodore Roosevelt Memorial Bill to Preserve Agricultural, Forest, Wildlife, and Open Space Land.** Non-metropolitan cities subject to the T. Roosevelt Memorial Preservation Act when adopting or amending a zoning ordinance, must *consider* restricting new residential, commercial, and industrial development in a manner consistent with the Act’s goal of preserving land from development sprawl. Cities are not required to adopt zoning practices consistent with the T. Roosevelt Memorial Preservation Act, but must demonstrate (possibly through findings of fact), that their decision process *considered* the Act’s stated goals.

Minn. Stat. § 103F.121; Minn. R. 6120.5000I

See [MN DNR sample floodplain management ordinances](#)

See also [MN DNR](#) for more information and resources on floodplain management

Minn. Stat. § 103F.335

See also [MN DNR](#) website for more information on MN Wild and Scenic Rivers.

Minn. Stat. § 103F.221; Minn. R. 6120.2500 – 3900

See [MN DNR sample shoreland management ordinance](#)

See also [MN DNR](#) website for more information and resources on shoreland management.

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

B. Drafting a readable zoning ordinance

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

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

1. Suggestions for drafting a readable zoning ordinance:

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

2. The importance of clear, unambiguous ordinance language

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

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

Lowry v. City of Mankato, 231 Minn. 108, 42 N.W.2d 553 (Minn. 1950).

Village of St. Louis Park v. Casey, 218 Minn. 394, 16 N.W.2d 459 (Minn. 1944).

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

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

Sample Definitions Section.

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

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

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

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

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

C. Drafting a legally defensible zoning ordinance

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

1. The Municipal Planning Act

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

Hubbard Broadcasting, Inc. v. City of Afton, 323 N.W.2d 757, (Minn. 1982); *DI MA Corp. v. City of St. Cloud*, 562 N.W.2d 312 (Minn. Ct. App. 1997).

Minn. Stat. §§ 462.351 - 462.365.

Minn. Stat. §§ 473.851 - 473.871.

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

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

Minn. Stat. § 462.357, subs. 1a, 1b

- Manufactured home parks

Minn. Stat. § 462.357, subd. 1

- Manufactured homes

Minn. Stat. § 462.357, subd. 1e

- Existing *legal* nonconformities at the time of zoning ordinance adoption

Minn. Stat. § 462.357, subd. 1g

- Feedlots

Minn. Stat. § 462.357, subd. 1

- Earth sheltered construction as defined by MN Stat. 216C.06

Minn. Stat. § 462.357, subd. 1

- Relocated residential buildings

Minn. Stat. § 462.357, subd. 7

- State licensed residential facilities or housing services registered under MN Stat. 144D serving six or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7

- Licensed day care facilities serving 12 or fewer persons in single family residential districts

Minn. Stat. § 462.357, subd. 7

- Group family day care facilities licensed under Minnesota Rules 9502.0315 to 9502.0445 to serve 14 or fewer children in single family residential districts

Minn. Stat. § 462.357, subd. 8

- State licensed residential facilities serving 7-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 7

- Licensed day care facilities serving 13-16 persons in multifamily residential districts

Minn. Stat. § 462.357, subd. 6

- Solar energy systems

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

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

2. Additional state law requirements

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

a. Flood plains, shoreland and wild and scenic rivers

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

b. Manufactured homes

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

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

c. Manufactured home parks

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

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

Minn. Stat. §§ 327.31 - 327.35; Minn. Stat. § 462.357, subd.1

For more information on manufactured homes and parks see the LMC information memo, *Manufactured Homes and Zoning: Comprehensive Advice*

Minn. Stat. § 327.32, subd. 5

Minn. Stat. § 462.357, subds. 1a,1b.

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

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

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

42 U.S.C. § 2000cc.

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

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

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

City of Woodinville v Northshore United Church of Christ, 162 P 3d 639 (Wash. Ct. App. 2007) ; *McGann v Inc. Vill. Of Old Westbury*, 719 N.Y.S.2d 803 (N.Y. Sup. 2000).

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

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

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

4. Federal and state constitutional concerns

Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114 (1926); *Kiges v. City of St. Paul*, 240 Minn. 522, 62 N.W.2d 363 (Minn. 1953); *State ex rel. Berndt v. Iten*, 259 Minn. 77, 106 N.W.2d 366 (Minn. 1960).

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

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

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

a. Legislative authority must be reasonable

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

Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 (Minn. 2006); *State v. Northwestern Preparatory School*, 37 N.W.2d 370 (Minn. 1949); *County of Morrison v. Wheeler*, 722 N.W.2d 329 (Minn. Ct. App. 2006)

See Section VC, *Standards for reviewing zoning applications: limits on city discretion*.

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

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

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

For example, the Minnesota Supreme Court invalidated provisions of one zoning ordinance that allowed public schools, but not private schools, to be located in a residential zone. The court ruled, in that instance, that the ordinance was arbitrary, because “the distinction between the different kinds of schools, upon which the classification made in the ordinance rests, is not based upon alleged evils which it is claimed exist in the case of private schools and do not exist in the case of public or parochial schools.” In the courts view two very similar entities (public and private schools) were being treated differently under the law. This difference was not reasonably related to protecting the health, safety and welfare of the public. As a result, the distinction was ruled to be arbitrary.

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

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

U. S. Const. Amend. V.

Minn. Const. art. I § 3.

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 43 S.Ct. 158 U.S. 1922.

See House Research Memo, *Eminent Domain: Regulatory Takings*.

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

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

D. Obtaining technical assistance in ordinance drafting

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

[LMCIT Land Use Loss Control Brochure](#)

III. Common issues in ordinance drafting

Zoning ordinances can accomplish a great deal of good for a community. Drafting a zoning ordinance seemingly opens up many possibilities for dealing with concerns or even outright problems and challenges faced by a particular community. However, cities must be careful not to exceed their authority in drafting a city zoning ordinance. Below are some common concerns raised by cities in relation to an initial drafting of a zoning ordinance.

A. Establishing permitted and conditional uses

[Sample Permitted and Conditional Uses.](#)

See LMCIT risk management memo [Conditional Use Permits: Frequently Asked Questions.](#)

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

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

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

B. Aesthetic zoning requirements

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

[Naegele Outdoor Advertising Co. of Minn. v. Village of Minnetonka](#), 162 N.W.2d 206 (Minn. 1968); [Pine County v. State, Dept. of Natural Resources](#), 280 N.W.2d 625 (Minn. 1979).

Traditionally aesthetic zoning has been criticized as not adequately related to the protecting the health and safety of the public. However, the Minnesota Supreme Court has ruled that “mere fact that adoption of zoning ordinance reflects desire to achieve aesthetic ends should not invalidate an otherwise valid ordinance.” Furthermore, the courts recognize that local city officials are in the best position to determine whether aesthetic regulations promote the community’s well-being. Generally, zoning ordinances that contain aesthetic regulations will be upheld if the council has made findings that they are reasonably tied to promoting a community’s health safety and welfare in addition to mere aesthetic concerns.

C. Performance standards

[Sample Performance Standards Section](#)

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

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

[Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 \(Minn. 2007\)](#); [Mendota Golf, LLP v. City of Mendota Heights, 708 N.W.2d 162 \(Minn. 2006\)](#); [Pine County v. State, Dept. of Natural Resources, 280 N.W.2d 625 \(Minn. 1979\)](#).

[Minn. Stat. § 103F.335](#)

[Minn. Stat. § 103F.221](#)

See Section VE1c *Applicability* for more information on regulatory takings.

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

E. Parking requirements

[Sample Parking Requirements.](#)

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

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

F. Historic Preservation

[Minn. Stat. § 138.74](#)

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

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

[Minn. Stat. § 138.73](#)

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

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

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

G. Zoning regulation of adult uses

See LMCIT risk management memo, [Strip Clubs: The Bare Essentials](#)

See LMC information memo, [Adult Use Packet](#) for more information and ordinance samples

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

Minn. Stat. § 617.242
*Northshor
Experience, Inc. v.
City of Duluth, MN*
442 F.Supp.2d 713
(D.Minn. 2006)

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

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

H. Restricting Feedlots

Minn. Stat. § 462.357,
subd. 1g.

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

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

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

I. Extra-territorial zoning and joint planning

1. Extra-territorial zoning

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

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

2. Joint planning

Minn. Stat. §
462.3585

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

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

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

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

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

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

IV. Zoning ordinance adoption and/or amendment

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

The Municipal Planning Act mandates a procedure for the adoption or amendment of zoning ordinances for both statutory and charter cities.

A. Public hearings and adoption

Minn. Stat. § 462.357,
subd. 3; For
information on
conducting hearings,
see LMCIT risk
management memo
Public Hearings.

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.

1. Notice and hearing

Minn. Stat. § 462.357,
subd. 3

See LMC information
memo *Newspaper
Publication*

A notice of the time, place and purpose of the hearing must be published in the official newspaper of the municipality at least ten days prior to the day of the hearing.

If an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least ten days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. However, failure to give mailed notice to individual property owners, or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with this subdivision has been made.

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.

Minn. Stat. § 462.357, subds. 2, 5 .

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

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.

2. Publication

Minn. Stat. § 412.191, subd. 4;

Minn. Stat. § 331A.02;

Minn. Stat. § 331A.04.

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

See Handbook, Chapter 7 for more information on publishing ordinances in summary form

V. Zoning ordinance administration

A. The 60-Day Rule

See LMCIT risk management memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*

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.”

Minn. Stat. § 15.99
Manco of Fairmont v. Town Bd. of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998) .

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.

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

1. Scope of the rule

Minn. Stat. § 15.99, subd. 1(c) .

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

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) .

2. Applications

Minn. Stat. § 15.99, subd. 1(c) .

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.

Minn. Stat. § 15.99, subd. 3(a) .

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.

Minn. Stat. § 15.99, subd. 3(c) .

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.

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

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

Minn. Stat. § 15.99, subd. 2(a); *Johnson v Cook County*, No. A08-1501 (Minn. 2010) (unpublished decision).

Minn. Stat. § 15.99, subd. 2(c) .

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

Minn. Stat. § 15.99, subd. 2(b) .

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

Minn. Stat. § 15.99, subd. 3(f) .

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

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

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) .

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.

Minn. Stat. § 15.99, subd. 3(g).

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.

Minn. Stat. § 15.99, subd. 3(g).

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.

Minn. Stat. § 15.99, subd. 3(d), (e).

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.

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

Minn. Stat. § 15.99, subd. 2(a), (e).

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.

See LMCIT risk management memo, *The 60-Day Rule: Minnesota's Automatic Approval Statute*.

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

B. Organizational structure for review of zoning applications

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

1. The zoning administrator

Typically, a city will have a staff person who acts as the “Zoning Administrator” who is the first point of contact with the public on zoning matters and provides and receives zoning application forms. Generally, this person will also perform a preliminary review of the application, refer the application to the Planning Commission (if one exists) or City Council for review and offer one or both bodies a staff report reviewing the adequacy of the application. Depending on the size of the city and the number of zoning applications the city typically receives, the position of zoning administrator may be a full-time position or a part-time position. In some cities, the city clerk simply bears the additional title of zoning administrator.

2. The planning commission

See LMC information memo [Planning Commission Guide](#)

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

Minn. Stat. § 462.354, subd. 1

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

Minn. Stat. § 462.357, subd. 3

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

Minn. Stat. § 462.357, subd. 3

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

3. Planning departments

Minn. Stat. § 462.354,
subd. 2

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

4. The city council

Minn. Stat. §
462.3595

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

5. Board of zoning adjustment and appeals

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

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

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

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

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

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

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

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

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

For more information on applications for rezoning see Section VC *Standards for reviewing zoning applications: limits on city discretion*

The varying discretion available to cities in making zoning decisions has been described as following a pyramid diagram

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

In quasi-judicial circumstances, the city must follow the standards and requirements of the ordinance it has adopted. If an application meets the requirements of the ordinance, generally it must be granted. If an application is denied, the stated reasons for the denial must all relate to the applicant's failure to meet standards established in the ordinance. In sum, the city has a great deal of liberty to establish the rules, but once established, the city is as equally bound by the rules as the public.

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

- Conditional use permits.
- Interim use permits.

- Variances.

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

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

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

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

1. Standard of review for re-zoning applications

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

See Section VC *Standards for reviewing zoning applications: limits on city discretion.*

An application for a rezoning is a request for an amendment to the zoning ordinance. When reviewing applications for re-zoning, the court has ruled that the city continues to act in a legislative capacity, even though the re-zoning application may only relate to one specific parcel owned by one individual. The existing zoning ordinance is presumed to be constitutional, and an applicant is only entitled to a change if they can demonstrate that the existing zoning is unsupported by any rational basis related to the public health, safety and welfare.

2. Making a record of the basis for zoning decisions

Minn. Stat. § 15.99, subd. 2(a) .

See Section VA *The 60-Day Rule.*

The 60-Day Rule requires the city to provide reasons for its denial of a zoning request. These reasons for denial must be stated on the record. In addition, the city must provide the applicant with a written statement of the reasons for denial. The reasons for denial or approval, whether written or stated on the record are considered the city’s “findings of fact” on the application if later court review of the city’s decision is necessary.

SuperAmerica Group, Inc. v City of Little Canada, 539 NW 2d 264 (Minn. Ct. App. 1995); *Swanson v City of Bloomington*, 421 NW 2d 307 (Minn. 1988); *Larson v Washington County*, 387 N.W.2d 902 (Minn. Ct. App 1986)

See also LMCIT risk management memo, *The Necessity of Adequate Findings/Reasons to Support Municipal Land Use Decisions* and LMC information memo, *Findings of Fact: Elected Officials as Policymakers*.

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

See Sections V3c *Conditional use permits* and V3d *Requests for variances from the zoning ordinance*, for more information on the standards of review for conditional use permits and variances.

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

For more information on public opposition see LMCIT risk management memos, *Land Use: The Neighbor Factor; Frolicking Between the Landmines*.

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

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

a. Neighborhood opposition

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

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

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

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

b. Conducting a public hearing

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

Minn. Stat. § 462.357,
subd. 3.

- Zoning ordinance adoption or amendment.

Minn. Stat. §
462.3595, subd. 2.

- Conditional use permits.

Minn. Stat. § 462.357,
subd. 3.

- Rezoning.

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

See [Sample Public
Hearing Notice](#)

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

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

For more information on conducting public hearings see LMCIT risk management memo, [Public Hearings](#).

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

3. Review of specific types of zoning applications

Cities who have adopted a zoning ordinance need procedures to help them review the different types of zoning applications they receive. Cities typically receive applications for conditional use permits, interim uses, variances and requests for rezonings. As discussed above, all of these applications are subject to the 60-Day Rule. However, this is where the similarities among the review procedures for each type of application ends. Each type of application requires a different standard of review, because state law (and likely local ordinance as well) establishes specific requirements for granting each type of application.

a. Permitted uses

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

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

Chase v. City of Minneapolis, 401 N.W.2d 408 (Minn. 1981).

Rose Cliff Landscape Nursery v. City of Rosemount, 467 N.W.2d 641 (Minn. Ct. App. 1991).

See Section III-A
*Establishing permitted
and conditional uses.*

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

b. Prohibited uses

See Section VC
*Standards of
reviewing zoning
applications: limits on
city discretion.*

[Minn. Stat. § 462.357,
subd. 6; *Sunrise Lake
Ass'n v. Chisago
County Bd. of
Comm'rs*, 633
N.W.2d 59 \(Minn. Ct.
App. 2001\)](#)

See Section VC3d
*Requests for
variances from the
zoning ordinance.*

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

c. Conditional use permits

[Amoco Oil Co. v. City
of Minneapolis](#), 395
N.W.2d 115 (Minn.
Ct. App., 1986); [Zylka
v. City of Crystal](#), 167
N.W.2d 45 (Minn.
1969).

See Sample [resolution
granting a CUP](#)

See Sample [resolution
denying a CUP](#)

[Minn. Stat. §
462.3595](#)

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

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

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

Minn. Stat. §
462.3595.

Minn. Stat. §
462.3595, subd. 2.

*Schwardt v. County of
Watonwan*, 656
N.W.2d 383 (Minn.
2003); *Yang v. County
of Carver*, 660
N.W.2d 828 (Minn.
Ct. App.
2003); *Citizens for a
Balanced City v.
Plymouth
Congregational
Church*, 672 N.W.2d
13 (Minn. Ct. App.
2003); *Trisko v. City of
Waite Park*, 566
N.W.2d 349 (Minn.
Ct. App. 1997).

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

A city may deny a CUP if the proposed use:

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

See Section IC *Role of
comprehensive
planning in zoning
ordinance adoption.*

*SuperAmerica Group,
Inc. v. City of Little
Canada*, 539 N.W.2d
264 (Minn. Ct. App.
1995).

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

Minn. Stat. §
462.3595, subd. 4

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

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

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

Northpoint Plaza v. City of Rochester, 465 N.W.2d 686 (Minn. 1991); *Snaza v. City of St Paul*, 548 F.3d 1178 (8th Cir. 2008)

Minn. Stat. § 462.3597.

A.G. Op. 59-A-32 (February 27, 1990).

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

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

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

d. Requests for variances from the zoning ordinance

See LMCIT risk management memo, *FAQs on Variances*

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

Minn. Stat. § 462.354, subd. 6.

See Section VB5 *Boards of Adjustment and Appeals*

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board’s decision is subject to appeal to the city council. Under the statutory undue hardship standard, a landowner is entitled to a variance if, and only if, the facts satisfy the three-factor test for undue hardship, which are:

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

- The property cannot be put to a reasonable use without the variance. **Caution!** In June 2010, the Minnesota Supreme Court issued a decision that changed the longstanding interpretation of the first factor. The Court held that the reasonable use factor is not whether the proposed use is reasonable, but rather whether there is reasonable use in the absence of the variance. This is a much stricter test, which considerably limits variance opportunities. A city will need to work closely with the city attorney to determine if a variance application can satisfy the first factor.
- The landowner’s situation is due to circumstances unique to the property not caused by the landowner. The uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone cannot create an undue hardship.

- 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.

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

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

City of Maplewood v. Valiukas, (Minn. Ct. App. Feb 11, 1997).

In granting a variance, the city may attach conditions, but the conditions must be reasonable and bear some relationship to the purpose of the variance. For example, if the variance reduces side yard setbacks, it may be reasonable to impose a condition of additional screening or landscaping to camouflage the structure built within the normal setback.

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

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

Nolan v. City of Eden Prairie, 610 N.W.2d 697 (Minn. Ct. App. 2000).

Graham v. Itasca County Planning Comm'n, 601 N.W.2d 461 (Minn. Ct. App. 1999).

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

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

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

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

Minn. Stat. § 462.357, subd. 6.

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

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

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

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

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

Minn. Stat. § 462.357, subd. 6(2)

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

e. Requests for rezoning or zoning ordinance amendments

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

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

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

Rezoning may be initiated by the planning commission, council, or a petition by an individual landowner. If a request for rezoning does not come from the planning commission, the matter must be referred to the planning commission for study and report. Care should be taken so that the 60-Day Rule discussed previously is not violated, resulting in an automatic granting of the rezoning.

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

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

i. Rezoning residential property

Minn. Stat. § 462.357,
subd. 2.

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

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

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

ii. Spot zoning

Amcon Corp. v. City of Eagan, 348 N.W.2d 66 (Minn., 1984);
Olsen v. City of Hopkins, 178 N.W.2d 719 (Minn. 1970);

Three Putt, LLC v. City of Minnetonka, No. A08-1436 (Minn. Ct. App 2009) (unpublished decision).

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

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

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

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

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

Spot zoning that results in a total destruction or substantial diminution of value of property may be considered a form of regulatory taking of private property without compensation. In these rare instances, a property owner may be entitled to compensation for damages related to a legislative rezoning.

D. Environmental review

See [Handbook, Chapter 16](#) for more information on environmental review

[Minn. Stat. § 116D.](#)

[Minn. R. ch. 4410.](#)

[Minn. Stat. § 16D.02.](#)

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

[Minn. Stat. § 15.99, subd. 3\(d\), \(e\); Minn. Stat. § 116D; Minn. R. ch. 4410.](#)

See Section VA *The 60-Day Rule*

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

E. Fees and escrow

[Minn. Stat. § 462.353, subd. 4\(a\).](#)

[Minn. Stat. § 462.353, subd. 4\(b\).](#)

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

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

[Minn. Stat. § 462.353, subd. 4\(d\).](#)

[Minn. Stat. § 462.361.](#)

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

Minn. Stat. § 462.353, subd. 4(a).

Generally, cities must adopt fees by ordinance. However, there is a statutory exception to this general requirement. The exception authorizes cities that collect an annual cumulative total of \$5,000 or less of land use fees to simply refer to a fee schedule in the ordinance that governs the official control or permit. These cities are authorized to adopt a fee schedule by ordinance or by resolution, either annually or more frequently, after providing notice and holding a public hearing. Notice must be published at least 10 days before the public hearing. The exception also authorizes cities that collect an annual cumulative total in excess of \$5,000 of land use fees to adopt a fee schedule if they wish, but they may only do so by ordinance, after following the same notice and hearing procedures.

Minn. Stat. § 462.353, subd. 4(c).

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

Minn. Stat. § 16B.685; Minn. Stat. § 326B.145

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

F. Updating and maintaining the city's zoning ordinance

The last, but perhaps most important topic to discuss in zoning administration is on-going maintenance of the zoning ordinance itself, both its actual text and maps. City zoning authority is created and regulated by statutes and court decisions. Both are changed or are amended frequently, making it imperative that cities remain abreast of current developments in the law and, with the assistance of legal counsel, amend their zoning ordinances accordingly.

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

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

1. Interim Ordinances (Moratoria)

Minn. Stat. § 462.355, subd. 4); *Pawn America Minnesota, LLC v. City of St Louis Park*, No. A08-1697 (Minn. Ct. App. 2009) (unpublished decision) (rev. granted Oct. 28, 2009)

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

a. Procedure for interim ordinance adoption

Minn. Stat. § 462.355, subd. 4(a)

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

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

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

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

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

b. Procedure for interim ordinance extension

Minn. Stat. § 462.355, subd. 4(c).

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

Minn. Stat. § 462.355, subd. 4(c)(3)

- Complete and adopt a comprehensive plan in cities that did not have comprehensive plan in place when the interim ordinance was adopted. This allows an extension for an additional year.

Minn. Stat. § 462.355, subd. 4(c)(1).

- Obtain final approval or review by a federal, state, or metropolitan agency of the proposed amendment to the city's official controls, when such approval is required by law and the review or approval has not been completed and received by the municipality at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c)(2).

- Complete "any other process" required by a state statute, federal law, or court order and when the process has not been completed at least 30 days before the expiration of the interim ordinance. This allows an extension for an additional 120 days.

Minn. Stat. § 462.355, subd. 4(c).

- Review an area that is affected by a city's master plan for a municipal airport. This allows for an additional period of 18 months.

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

c. **Applicability**

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

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.

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).

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.

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002)

VI. Zoning ordinance enforcement

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

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

A. Legal nonconformities predating the adoption of the zoning ordinance

1. Legal nonconformities

Minn. Stat. § 462.357, subd. 1c.

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

Minn. Stat. § 462.357, subd. 1d.

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

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

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

Minn. Stat. § 462.357, subd. 1e.

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:

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

Minn. Stat. § 462.357,
subd. 1e (c)

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

Minn. Stat. § 462.357,
subd. 1f.

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

2. Shoreland legal nonconformities

a. All shoreland lots

Minn. Stat. § 462.357
subd. 1e(2)

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

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

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

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

Minn. R. ch. 7080

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

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

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

b. Contiguous lots without habitable residential dwellings

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

[Minn. R. ch. 6120](#)

- The lot must be at least 66 percent of the dimensional standard for lot width and lot size for the shoreland classification consistent with Minn. R. ch. 6120.

[Minn. R. ch. 7080](#)

- The lot must be connected to a public sewer, if available, or must be suitable for the installation of a Type 1 sewage treatment system consistent with Minn. R. ch. 7080, and local government controls.

- The lot's impervious surface coverage does not exceed 25 percent of each lot.
- The development of the lot is consistent with the city-adopted comprehensive plan (if any).

c. Contiguous lots with habitable residential dwellings

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

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

B. Violations of the zoning ordinance: criminal penalties

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

Minn. Stat. § 462.362
Minn. Stat. § 169.89,
subd. 2.
Minn. Stat. §§ 609.02,
subds. 3, 4a;
609.0332; 609.034.

See Handbook,
Chapter 7 for
information on
prosecution
responsibilities for
violations of local
ordinances

C. Violations of the zoning ordinance: civil remedies

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

Minn. Stat. § 462.362

City of Minneapolis v. F and R, Inc. 300 N.W.2d 2 (Minn. 1980); *Rockville Tp. v. Lang*, 387 N.W.2d 200 (Minn. Ct. App. 1986); *Hall Nursery v. Chanhassen*, 763 NW 2d 42 (Minn. Ct. App. 2009)

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

Minn. Stat. §462.3595, subd. 3

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

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

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

VII. Conclusion: other land use controls available to cities

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

A. Subdivision ordinances

Minn. Stat. § 462.358

See LMC information memo, *Subdivision Guide for Cities*

See Handbook, Chapter 14 for more information on city subdivision ordinances

Municipalities have the authority to regulate subdivisions of land for many reasons including but not limited to encouraging orderly development and planning for necessities such as streets, parks and open spaces. Cities have the authority to adopt a subdivision ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide tracts of land in the city.

Minn. Stat. § 462.358, subd. 2b.

Minn. Stat. § 462.353, subd. 4.

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

- Streets, roads.

- Sewers.

- Electric, gas, and water facilities.

- Stormwater drainage and holding areas or ponds and similar utilities and improvements.

- Parks, recreational facilities, playgrounds, trails.

- Wetlands.

- Open space.

[Minn. Stat. § 462.353, subd. 4](#)

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

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

- The size, location, grading and improvement of lots, structures, public areas, streets, roads, trails, walkways, curbs, gutters, water supply, storm and drainage, lighting, sewers, electricity, gas and other utilities.

- The planning and design of sites.

- Access to solar energy.

- The protection and conservation of floodplains, shore lands, soils, water, vegetation, energy, air quality, and geologic and ecologic features.

- Consistency of the subdivision with the official map (if one exists) and other local controls such as zoning and the comprehensive plan (if one exists).

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

1. Platting requirements

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

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

B. The official map

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

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

C. Safety and maintenance codes

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

See LMC information memo, *Subdivision Guide for Cities*

Minn. Stat. § 505.01, subd. 3(f)

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

Minn. Stat. § 462.359.

Minn. Stat. § 462.357, subd. 1.

For more information on the official map see *Handbook*, Chapter 14

Minn. Stat. § 462.359, subd. 3.

1. The State Building Code

State Building Code

For more information on the State Building Code see [Handbook, Chapter 13](#)

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

Minn. Stat. § 326B.121.

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

Minn. Stat. § 326B.121

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

Minn. Stat. § 326B.121

Minn. Stat. § 326B.121.

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

Minn. Stat. § 326B.16

Minn. Stat. § 326B.112

Minn. Stat. § 326B.175

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

2. Nuisance ordinances

Minn. Stat. § 412.221, subd. 23.

Minn. Stat. § 561.01.

See LMC information memo, *Public Nuisance*

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

3. Property maintenance ordinances

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

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

4. Hazardous and Substandard Buildings Act

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

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

D. City land acquisition

For more information
on city acquisition of
property see the LMC
information memo,
*Purchase and Sale of
Real Property*
Minn. Stat. § 282.01;
City of St Paul v State,
754 NW 2d 386,
(Minn. Ct. App. 2008)

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



LOCAL PLANNING HANDBOOK

A guide and resources for Twin Cities regional municipalities preparing their comprehensive plans

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Metropolitan Council

390 Robert Street N., St. Paul, Minnesota 55101

General phone: 651-602-1000
Data Center: 651-602-1140
TTY: 651-291-0904
E-mail: data.center@metc.state.mn.us
Web site: www.metrocouncil.org

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About the Local Planning Handbook

This Handbook is intended to help municipalities in the Twin Cities region update their local comprehensive plans, which – under state law – must be consistent with regional plans. The Metropolitan Council revised and redesigned the Handbook to reflect the needs and preferences identified by local planners and officials. The redesigned handbook features:

- a concise and user-friendly format
- web and print versions
- links to numerous online resources, including the latest forecasts and data
- many new forms, worksheets, and templates
- an extensive glossary of planning terms
- step-by-step descriptions of the comprehensive plan preparation and review processes

The Metropolitan Council will regularly update the Handbook with new planning information and enhanced features. New information and updates will be highlighted on the Handbook homepage at <http://www.metrocouncil.org/planning/lph/handbook.htm>. The homepage also serves as an interactive Table of Contents with direct links to key content and tools. **Only the on-line version of this Handbook can be relied upon as being current. This printed copy of the Handbook may not contain the most current information.**

The Metropolitan Council encourages local planners and officials to bookmark the Handbook homepage in their web-browser and to regularly check the online version of the Handbook to ensure access to the most current information, forecasts, forms, templates and worksheets.

Handbook documents are in Adobe PDF format and can be downloaded and printed. **In order to best utilize all the interactive features of these PDF documents, we recommend using the free Adobe Reader software Version 7.0.** See <http://www.adobe.com/products/acrobat/readstep2.html> to download it from the Adobe website.

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Staff resources

The continuing vitality of the seven-county Twin Cities metropolitan region depends in great part on planning for steady and coherent growth. The challenges inherent in planning for the region are met through cooperation between local and regional planners.

As the planning agency for the region, the [Metropolitan Council](http://www.metrocouncil.org/about/about.htm) supports and promotes communication with communities and the people responsible for planning them. This communication is the foundation of superior planning. It is in this spirit that we have created this handbook for persons involved with and interested in local and regional planning. State Law directs the Council to prepare and adopt guidelines and procedures relating to the requirements and provisions of the state law, including the Metropolitan Land Planning Act, to provide assistance to local governmental units and school districts in accomplishing the provisions of the comprehensive planning law. The Council adopted this version of the Local Planning Handbook on September 14, 2005.

The Metropolitan Council's [sector representatives](http://www.metrocouncil.org/planning/assistance/sectorreps.htm), assigned to specific units of government, are each municipality's key point of contact. These staff members provide specific information to municipalities and they serve as a liaison between the municipality and the Metropolitan Council.

[Technical staff members](http://www.metrocouncil.org/planning/assistance/staff.htm) who have expertise in specific areas of planning assist municipalities either directly or through their sector representatives.

<http://www.metrocouncil.org/about/about.htm>

[Minn. Stat. 473.854](#)

<http://www.metrocouncil.org/planning/assistance/sectorreps.htm>

<http://www.metrocouncil.org/planning/assistance/staff.htm>

Where to mail documents for Council review

Mail paper copies and all relevant material of plans requiring Metropolitan Council review to the Reviews Coordinator:

Reviews Coordinator
Metropolitan Council
390 Robert St. N.
St. Paul, MN 55101-1805

Policy documents and research materials

To order copies of the *2030 Regional Development Framework* or any of the policy plans, e-mail or phone the data center.

E-mail: data.center@metc.state.mn.us

Phone: 651-602-1140

data.center@metc.state.mn.us

[Articles, maps, tables and research reports](#) are available on the Metropolitan Council website. Most are also available in print.

<http://www.metrocouncil.org/resources/resources.htm>

The local comprehensive plan is a public document that describes how a community wants to develop over a specified planning period. The plan also helps to clarify the relationships between the community and the region.

[Minn. Stat. 473.864 Subd. 1 & 2](#)

To ensure that coordination occurs between local municipalities and regional systems, Minnesota law requires municipalities in the region to submit their local comprehensive plans to the Metropolitan Council for review and, as necessary, for appropriate corrective actions.

[Minn. Stat. 473.175](#)

The Development Guide directs local planning

To achieve the goals of the Metropolitan Land Planning Act, State law requires the Metropolitan Council to adopt a comprehensive Metropolitan Development Guide that establishes parameters for regional infrastructure and local planning. In framing the policies and strategies found in the Guide, the Council aims to optimize the effectiveness of regional infrastructure and to meet the challenges of growth.

The Development Framework sets out goals and guides system expansion

The Metropolitan Development Guide is comprised of a Regional Development Framework and system plans for water resources management; parks; transportation, including transit and aviation. Together, the Development Framework and system plans create a vision for the region and craft the goals, policies, standards and programs that bring the vision to life. These documents also include tools – maps, templates, forecasts, budgets and programs – that local planners need.

[The 2030 Regional Development Framework](http://www.metrocouncil.org/planning/framework/timeline.htm) sets out four goals to guide the region's development. These goals shape development plans for the region's infrastructure, and they guide the pattern of growth in the region. The four goals are:

- **Efficient Growth.** Work with local communities to accommodate growth in a flexible, connected and efficient manner.
- **Multi-Modal Transportation.** Plan and invest in multi-modal transportation choices, based on a full range of costs and benefits, to slow the growth of congestion and serve the region's economic needs.
- **Housing Choices.** Encourage expanded choices in housing locations and types, and improved access to jobs and opportunities.
- **Natural Resource Protection.** Work with local and regional partners to conserve, protect and enhance the region's vital natural resources.

<http://www.metrocouncil.org/planning/framework/timeline.htm>

**System plans
implement the
Framework**

The system plans, also called policy plans, emerge from the 2030 Development Framework. The policy plans present strategies, policies and methods designed to implement the regional goals.

[The 2030 Transportation Policy Plan](http://www.metrocouncil.org/planning/transportation/TPP/2004/summary.htm), adopted in 2004, addresses the need to prepare for expected growth. Besides maintaining the road system, the region is challenged to develop a variety of transit options. For the first time, aviation is included in the transportation policy plan.

<http://www.metrocouncil.org/planning/transportation/TPP/2004/summary.htm>

[The 2030 Water Resources Management Policy Plan](http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm), adopted in 2005, establishes policies to ensure the protection of water resources as the region continues to grow. It focuses on assessing the region's water supply, protecting surface water from pollution and ensuring that wastewater flowing into sewer systems is treated efficiently.

<http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm>

[The 2030 Regional Parks Policy Plan](http://www.metrocouncil.org/planning/parks/2005/ParksPlan.htm), adopted in 2005, recognizes the need to maintain and expand the open spaces that promotes the quality of life in the region.

<http://www.metrocouncil.org/planning/parks/2005/ParksPlan.htm>

**Council staff work
with local planners**

The Council's [sector representatives](http://www.metrocouncil.org/planning/assistance/sectorreps.htm) work closely with each community as it prepares its comprehensive plan. They analyze comprehensive plans and work with the local jurisdiction to ensure the plan meets the applicable requirements of State Law and Council policies.

<http://www.metrocouncil.org/planning/assistance/sectorreps.htm>

After the updated plan is submitted, and the plan has been reviewed, the Council planner who is designated as the principal reviewer will present the findings of the review to the local jurisdiction. Eventually, the findings are submitted to the Community Development Committee and to the Metropolitan Council. The Council staff report may include a recommendation for specific actions needed to correct or to clarify the plan before it is formally adopted by the Community.

[Members of the Metropolitan Council](http://www.metrocouncil.org/about/members.htm) are appointed by the Governor, and are responsible for determining that local plans are prepared in accordance with laws and policies that govern regional systems and comprehensive planning content.

[Minnesota Law](#) requires every municipality and county within the seven-county metropolitan area to prepare and to submit a comprehensive plan to the Metropolitan Council.

<http://www.metrocouncil.org/about/members.htm>

[Minn. Stat. 473.86-862](#)

<http://www.metrocouncil.org/about/metromap.pdf>

Cities

To fulfill statutory requirements, every incorporated city within the seven-county region (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington counties) submits a comprehensive plan. The cities of Rockford, Hanover, Northfield and New Prague are exempt.

Townships

Every township is required to prepare and submit a comprehensive plan; however, communities that do not have the resources to do so may request assistance. Townships have two options:

- Request that their County Board prepare a comprehensive plan and implementation measures for the township, or
- Create a township planning unit and develop a comprehensive plan and ordinances for themselves.

**Counties: Anoka,
Carver, Dakota,
Scott and
Washington**

The counties of Anoka, Carver, Dakota, Scott and Washington are required to prepare and submit local comprehensive plans that include plans for land use, transportation, and solid waste management and an implementation program. Counties must also prepare comprehensive plans for townships that do not or cannot prepare plans for themselves.

**Counties: Hennepin
and Ramsey**

Hennepin and Ramsey Counties must prepare implementation programs for their transportation and solid waste management plans. If a city or township within the jurisdiction of one of these counties requests it, the county is responsible for managing the maintenance program for that community's septic maintenance system.

The Metropolitan Land Planning Act requires each comprehensive plan to address the four areas described below. Additional statutes and policies stipulate exactly what needs to be included in the discussions within each area.

**The background
section sets the
stage**

The **background** section of the plan delineates the community's vision and expectations. It includes the objectives, policies and forecasts that serve as the basis of the community's plans. Detailed requirements are identified in [Section 2 of this Handbook](#).

**The land use plan
allocates resources**

In the **land use section** the local comprehensive plan explains how the community has allocated and will allocate land use, how it will accommodate population growth, and how it protects special resources. Detailed information and requirements are identified in [Section 3 of this Handbook](#).

[Minn. Stat. 473.859, Subd. 1 through 6](#)

<http://www.metrocouncil.org/planning/LPH/LPHSect2.pdf>

<http://www.metrocouncil.org/planning/LPH/LPHSect3.pdf>

The public facilities plans protect infrastructure

- Besides an inventory of existing land use, the **land use** section includes a description of the community's development plans, staging them in five-year increments.
- In the **housing plan** the community discusses plans for needed housing as these relate to housing needs throughout the region.
- In the **special resources** section the comprehensive plan identifies certain resources within the boundaries of the jurisdiction and outlines plans to ensure their protection.

This section describes plans relating to transportation, water resources and parks. The expected population growth in the region places extraordinary pressures on these systems. For this reason, local plans relating to these systems must be thorough and appropriate.

- The **transportation** section must address the legal requirements for maintaining and developing roads, highways, transit, non-motor transportation and aviation. Detailed comprehensive plan requirements for roads and highways, transit and aviation are included in [Section 4 of this Handbook](#).
- The **water resources** section addresses wastewater, water supply and surface water management. Maintaining an adequate and safe water supply is critical as population grows. This means assessing resources and attending to safe and thorough treatment methods. Detailed comprehensive plan requirements for wastewater, surface water and water supply are included in [Section 5 of this Handbook](#).
- The **parks and open space** section must identify and describe parks and trails facilities within the jurisdiction. Detailed park plan requirements are included in [Section 6 of this Handbook](#).

<http://www.metrocouncil.org/planning/LPH/LPHSect4.pdf>

<http://www.metrocouncil.org/planning/LPH/LPHSect5.pdf>

<http://www.metrocouncil.org/planning/LPH/LPHSect6.pdf>

The implementation programs carry out the plans

In the **implementation** section, the jurisdiction shows how local official controls will ensure the continued viability of plans outlined in other sections of the comprehensive plan. This section also outlines the community's capital improvement program. Detailed implementation program requirements are included in [Section 7 of this Handbook](#).

<http://www.metrocouncil.org/planning/LPH/LPHSect7.pdf>

Growth is dynamic in the region and its communities. The Metropolitan Development Guide requires amendment occasionally to reflect changes at the regional level. When this occurs, the Metropolitan Council notifies affected communities that they must review their plans. Communities also may initiate an **update** or **amendment** to their comprehensive plan.

Decennial review requires a comprehensive plan update

Local units are required to review and update their comprehensive plans **at least once every 10 years**, and the Metropolitan Council is required to review the updated plan. The current round of updates was launched with the release of the system statements on September 12, 2005. These updates are due in 2008, three years from the date the system statement was received.

[Minn. Stat. 473.864, Subd. 2](#)

A new system statement alerts each affected jurisdiction

Minnesota law specifies that a revision of the Regional Development Framework or a change in one or more of the policy plans will result in a new system statement that communicates the change. A system statement is created uniquely for each jurisdiction affected by the change. The system statement alerts the jurisdiction that the local comprehensive plan must be reviewed and an amendment may be required. If an amendment is required as a result of a revision of the Regional Development Framework or a change in a policy plan, the local jurisdiction has nine months to prepare the amendment and submit it to the Council for review.

[Minn. Stat. 473.856](#)

Comprehensive plan amendments

If a municipality changes any part or chapter of its comprehensive plan, it must submit a [comprehensive plan amendment and comprehensive plan amendment form](#) to the Metropolitan Council for review. Municipalities amend their comprehensive plans for various reasons including:

- Changes resulting from interim planning activities such as master plans, redevelopment plans or annexation
- A need to change a land use designation to allow a proposed development
- Routine update of a public facilities element, such as a parks plan
- A text amendment to revise a land use category, policy or other description
- A routine update to incorporate new information such as census figures

<http://www.metrocouncil.org/planning/assistance/resources.htm>

***Process overview
for updates and
amendments***

Minnesota law outlines a sequence for submitting a comprehensive plan to specific units of government before it is submitted to the Metropolitan Council. This ensures that the Metropolitan Council reviews only those plans that have been reviewed by affected jurisdictions and the comprehensive plan has been approved by the municipality's own governing body.

The review process and timeline are slightly different for comprehensive plan updates and comprehensive plan amendments. While the general steps are the same, the timeline for an amendment is usually shorter than for an update which is typically more complex and lengthy. [See the review process and timelines for both updates and amendments outlined in a table.](#)

Before a municipality submits its updated or amended comprehensive plan to the Metropolitan Council it must take the following steps:

- Allow for adjacent governments, affected special districts lying in whole or in part within the metropolitan area, and affected school districts to review and comment
- Planning Commission approval
- Local governing body approval (but not final adoption).

***Adjacent and
affected
governmental units
review the plan***

Minnesota law requires each municipality to submit its proposed comprehensive plan to adjacent governments, affected special districts lying in whole or in part within the metropolitan area, and affected school districts for review and comment prior to submission to the Council. Special districts typically include school districts, park districts, watershed districts and watershed management organizations, transit providers, commissions such as the Metropolitan Airports Commission, and federal and state agencies.

[Minn. Stat. 473.858](#)
[Minn. Stat. 473.854](#)

<http://www.metrocouncil.org/planning/LPH/reviews.pdf>

Review Period

The municipality must allow adjacent governments, affected special districts, and affected school districts up to:

- 6 months to review and comment on an updated comprehensive plan
- 60 days for comprehensive plan amendments.

This waiting period allows interested parties to review and comment on the plan before Metropolitan Council review.

The Council may prescribe a shorter review and comment period for "minor plan amendments," or may waive the review and comment period if a minor plan amendment involves lands that are not contiguous to other local governmental units.

[Minn. Stat. 473.858, Subd. 2](#)

The Council may waive the adjacent review and comment period for a minor plan amendment if all of the following are met:

- the amendment involves a site of 40 acres or less; and
- the amendment does not change the community's growth forecasts for 2010-2030 or TAZ allocations; and
- the amendment site is either (1) more than one quarter mile of an adjacent jurisdiction; or (2) beyond the distance or area that the community's adopted ordinances require notice to adjacent or affected property owners, whichever distance is less.

The Council may also waive the adjacent review and comment period if a text change whose cumulative impacts meet the criteria described above.

Communities should consult with Council staff to determine if an amendment is "minor" for which the Council might waive the review and comment by adjacent jurisdictions.

Submit comments to adjacent and affected jurisdictions and Metropolitan Council

The comments of adjacent governments, affected special districts lying in whole or in part within the metropolitan area, and affected school districts and the subsequent response should be included with the comprehensive plan submitted to the Metropolitan Council. Communities are encouraged to make it a regular practice to communicate with adjacent governments, affected special districts lying in whole or in part within the metropolitan area,, and affected school districts about all plans and development proposals being considered by the planning commission and governing body.

Updated plan as sent to Council goes to adjacent and affected jurisdictions

[State law](#) requires that when the comprehensive plan update is submitted to the Metropolitan Council, a copy also be re-submitted to adjacent governments, affected special districts lying in whole or in part within the metropolitan area,, and affected school districts when the plan is submitted to the Metropolitan Council.

[Minn. Stat. 473.858, Subd. 2](#)

Local government gives preliminary approval

The planning commission of the municipality approves the updated comprehensive plan after review by adjacent communities, and affected special districts lying in whole or in part within the metropolitan area. Next, the governing body considers the updated comprehensive plan, acts to give it preliminary approval, subject to Metropolitan Council review, and authorizes submittal of the plan to the Metropolitan Council. Local governing units must not confer final approval of the plan or implement any part of it before the Metropolitan Council has reviewed and, if necessary, commented on it.

The Metropolitan Council encourages submission of planning documents in an electronic format, such as an Adobe PDF file saved onto a CD. With electronic submittals, the required number of paper copies is reduced, thus reducing a community's mailing cost and paper use. In addition, electronic submittals provide a faster way for documents to be entered into the Council's Electronic Content Management System, which is used by Council staff to review the planning documents.

Submitting in a digital format to reduce number of paper copies

To submit a comprehensive plan update or amendment in electronic format, mail the CD with the complete electronic document and one hardcopy to the Reviews Coordinator.

The Council's official review does not start until both the electronic and paper versions of the document are received the guidelines below are followed:

1. The electronic copy is organized as one unified document. For example, "CityName2030CPU.pdf" is acceptable versus numerous separate files of chapters, figures, and appendices.
2. The CPU transmittal form and any background information are included at the beginning of the electronic submittal.
3. The electronic copy and the paper copy are exactly the same.

For communities that are not able to submit in an electronic format, five (5) complete paper copies are required for comprehensive plan updates. Three (3) complete paper copies are required for comprehensive plan amendment submittals.

Submitting paper copies only

To submit paper copies only, mail the comprehensive plan and related documents to the Metropolitan Council's Review Coordinator as follows:

- Comprehensive plan update or amendment: Five (5) complete paper copies
- Surface water management plans, water supply plan, comprehensive sewer plan, CA/MNRRRA plans: Two (2) copies

Reviews Coordinator
Metropolitan Council
390 Robert St. N.
St. Paul, MN 55101-1805

Reviews Coordinator
Metropolitan Council
390 Robert St. N.
St. Paul, MN 55101-1805

Conformance to system plans

In its review of a local comprehensive plan, the Metropolitan Council views a jurisdiction's intended actions from the perspectives of the Metropolitan Land Planning Act and the regional system plans. The review is designed to determine how the community's planned actions relate to the interests of the region over the long term. Local comprehensive plan updates and amendments are evaluated relative to three criteria:

- **Conformance** with all metropolitan systems policy plans for transportation, water resources and parks
- **Consistency** with requirements of the Metropolitan Land Planning Act and Metropolitan Council policies
- **Compatibility** with the plans of other jurisdictions, including school districts

One of the Metropolitan Council's key functions is to ensure regional systems are managed and used effectively. Therefore, an extensive system plan has been crafted for each of the major systems: water resources; parks; and transportation, including transit and aviation.

In order to be considered complete, the comprehensive plan must include specific information regarding the community's or county's conformance with the requirements of these system plans.

A local comprehensive plan conforms to the systems plans if it includes adequate and complete information as described in the system statement, and does not present a substantial impact on, or contain a substantial departure from, metropolitan systems plans.

The Metropolitan Council may require a plan modification if the plan is more likely than not to have a substantial departure from or impact on a regional system or plan.

[\(Handbook, page 1-15\)](#)

[MLPA overview](#)

[Minn. Stat. 473.175](#)

[Minn. Stat. 473.859](#)

Consistency with statutory requirements and regional policies

The basic content required in a local comprehensive plan is specified by laws, Executive Orders, and the Metropolitan Council’s regional plans and policies. A key criterion in a comprehensive plan review is consistency with the statutes and regional plans.

Consistency means that the comprehensive plan includes every major section required by statute and meets the expectations outlined in the *2030 Regional Development Framework* and system plans.

Consistency with special rules

Other state and federal rules and statutes require municipalities to address specific regional planning issues.

Communities adjoining the Mississippi River must prepare and submit **Critical Area and Mississippi National River and Recreation Area (CA/MNRRRA)** plans.

<http://www.revisor.leg.state.mn.us/stats/116G/15.html>

Local units of government with a public water supply must prepare a **water supply plan**. Municipalities serving over 1,000 residents need to submit **emergency and conservation plans** to the Department of Natural Resources (DNR) every 10 years.

[Minn. Stat. 473.859, Subd. 3](#)
[Minn. Stat. 103G.291](#)
[Minn. Stat. 473.859, Subd. 6](#)

Compatibility with adjacent and affected jurisdictions

Comprehensive plan updates and amendments must be reviewed by adjacent and affected jurisdictions. If an objection or concern is expressed, the documentation resulting from the ensuing exchange must be included in the plan submitted to the Metropolitan Council.

[Minn. Stat. 473.858, Subd. 2](#)

To ensure coordination of regional systems, state law gives the Metropolitan Council authority to require a local governmental unit to modify its plan. A plan modification may be required if an aspect of the comprehensive plan has the potential of resulting in a substantial impact on a metropolitan system, or if it represents a substantial departure from one or more metropolitan system plans.

The regional system plans identify the comprehensive plans contents required to ensure conformance with the regional plans. Deviation from the regional policy plans will more likely than not result in a departure from or impact on the regional systems:

- [2030 Transportation Policy Plan](#)
- [2030 Water Resources Management Policy Plan](#)
- [2030 Parks Policy Plan](#)

If the Metropolitan Council requires a plan modification, the Council must adopt findings and a resolution concluding that the comprehensive plan or a part of it is more likely than not to have a substantial impact on or contain a substantial departure from metropolitan policy plans.

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter1_Final.pdf#page=6

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_RegionalFramework.pdf#page=8

<http://www.metrocouncil.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=15>

[Minn. Stat. 473.175 subd. 1](#)

The reviewer determines completeness

Within 60 days after the Metropolitan Council resolves to require a plan modification, the community or county government must respond with either a letter of agreement or notification that it intends to contest the requirement. Minnesota law specifies a course of action for contesting a required plan modification.

[The Metropolitan Council's sector representative](#) assigned to each municipality works closely with the community's planning staff as the local unit develops a comprehensive plan update that meets the criteria of statute and Metropolitan Council policy and meets with the approval of affected jurisdictions.

[See the review process and timelines for both updates and amendments outlined in a table.](#)

The initial review determines if the comprehensive plan update includes all the elements required by statute and Metropolitan Council policy in sufficient detail to determine conformance with regional systems and consistency with Council policies. The Metropolitan Council staff strives to do this within 15 days after the Council receives the plan update.

- If the submittal contains all the information required to review a comprehensive plan, the municipality is notified that the plan is complete.
- If the submittal does not contain all the information required to review a comprehensive plan, the municipality is notified that the plan is incomplete. The notification to the municipality will identify the missing information.

If information must be added, it is submitted directly to the Principal Reviewer and the determination of the plan's completeness is repeated.

[Minn. Stat. Sec. 483.866](#)

<http://www.metrocouncil.org/planning/assistance/staff.htm>

<http://www.metrocouncil.org/planning/LPH/reviews.pdf>

Metropolitan Council staff members conduct the review

Once a local comprehensive plan update is deemed complete, Metropolitan Council planning and technical staff review it for conformance with the regional system plans, consistency with the Metropolitan Land Planning Act requirements and Metropolitan Council policies, and compatibility with adjacent communities.

The Metropolitan Council has 120 days to complete its review of and comment on the local comprehensive plan.

[Minn. Stat. 473.175, Subd. 2](#)

Extension of the review period

The Metropolitan Council may extend the review period if it is mutually agreed to by the municipality.

The plan goes to full Metropolitan Council for action

Metropolitan Council staff will prepare a report and present the findings and recommendations to the [Community Development Committee](#) for deliberation before the matter is taken to the full Council.

<http://www.metrocouncil.org/about/committees.htm>

[Members of the Metropolitan Council](#) consider the report and the findings. If the comprehensive plan conforms to the regional systems policy plans, the Council will direct that the municipality may put its comprehensive plan into effect. If the plan does not conform or otherwise is not in order, per the law and policies, the Council shall send the local unit a resolution, with its decision to require modifications to assure conformance with the metropolitan system plans.

<http://www.metrocouncil.org/about/members.htm>

Local citizens, staff, local officials and other interested parties are welcome to attend meetings of the full Metropolitan Council or of any of the standing committees, including the Community Development Committee. Most presentations and discussion occur at committee meetings.

The reviewer determines completeness

The following steps outline the Metropolitan Council process for reviewing comprehensive plan **amendments**. The process is similar to that used for comprehensive plan updates.

[See the review process and timelines for both updates and amendments outlined in a table.](#)

<http://www.metrocouncil.org/planning/LPH/reviews.pdf>

The initial review determines if the plan includes all the elements required by statute and Metropolitan Council policy. This review for completeness occurs within 15 days after reviewers receive the plan amendment. When the review is completed, the municipality is notified.

- If the comprehensive plan amendment contains all the information required for review, the municipality is notified that the plan is complete.
- If the comprehensive plan amendment does not contain all the information required for review, the municipality is notified that the amendment is incomplete. The notification to the municipality will identify the missing information.

If information must be added or changed, it is submitted directly to the Principal Reviewer and the determination of the application's completeness is repeated before the review process begins.

Metropolitan Council staff members conduct the review

Once a comprehensive plan amendment is deemed complete for review, Council staff reviews it for conformance with the regional system plans, consistency with the Metropolitan Land Planning Act requirements and Metropolitan Council policies, and compatibility with adjacent communities.

The Council strives to review proposed amendments within 60 days.

Extension of the review period

The Council may extend the review period to 120 days if needed. The Council may also extend the review period beyond 120 days if it is mutually agreed to by the municipality. There are occasions when complex amendments require the extra time for review. Local units are advised regularly during the process if it appears more time will be needed.

Metropolitan Council may respond with an administrative review or...

Metropolitan Council staff may [administratively review](#) and respond to comprehensive plan amendments, surface water management plans, and water supply plans if these meet certain conditions. In general, small changes that do not affect a metropolitan system plan or involve a change to the Metropolitan Urban Service Area (MUSA) can be handled administratively. Communities should refer to the complete list of criteria adopted by the Metropolitan Council (most recently on May 11, 2005).

<http://www.metrocouncil.org/planning/assistance/AdministrativeReview.pdf>

If the plan review is conducted administratively, Council staff will issue a letter indicating that no modification of the proposed amendment is required and that the community may put the amendment into effect. If the application does not meet the administrative review criteria, it will be handled in the usual way.

The amendment may go to full Metropolitan Council for action

If the comprehensive plan amendment does not qualify for the administrative review process, staff will prepare a report. The report findings and recommendations are presented to the [Community Development Committee](#) for deliberation before they are taken to the full Metropolitan Council.

<http://www.metrocouncil.org/about/committees.htm>

[Members of the Metropolitan Council](#) consider the report and the findings before taking final action. If the amendment conforms to the regional systems policy plans, the Metropolitan Council will direct that the municipality may put its comprehensive plan amendment into effect. If there are no issues, the amendment may be placed on the Community Development Committee and Council consent agendas.

<http://www.metrocouncil.org/about/members.htm>

Local citizens, staff, local officials and other interested parties are welcome to attend meetings of the full Metropolitan Council or of any of the standing committees, including the community development committee. Most presentations and discussion occur at committee meetings.

After the Metropolitan Council has taken action on the comprehensive plan update or amendment, the Metropolitan Council will provide written notification of the action. Following this notice, the municipality must take the following steps:

- Respond to plan modifications, if applicable
- Adopt the comprehensive plan in final form after considering Metropolitan Council review recommendations
- Submit one electronic copy and one hard copy of the comprehensive plan update to the Metropolitan Council. The electronic copy is organized as one unified document. For example, "CityName2030CPU.pdf" versus numerous separate files of chapters, figures, and appendices (see Pages 1-12 and 1-13 for electronic submittal guidelines).

***Local government
adopts the
comprehensive plan***

Minnesota law requires each local governmental unit to formally adopt the comprehensive plan, along with any required modifications, within nine months after the Metropolitan Council's final action. If the Metropolitan Council has recommended changes, the local government should incorporate them into the plan or respond to the Council before the governing body adopts the comprehensive plan.

[Minn. Stat. 473.864](#)

Send one electronic copy and one hard copy to the Metropolitan Council and the process is finished

Once the local governmental unit formally adopts its comprehensive plan, one electronic copy and one hardcopy of that plan and the official controls implementing the plan must be submitted to the Council. The electronic copy should be organized as one unified document versus numerous separate files of chapters, figures, and appendices.

Local governmental units cannot adopt any official controls or fiscal devices that conflict with their comprehensive plans or which permit activity in conflict with the metropolitan system plans. If local zoning ordinances or other official controls conflict with a community's comprehensive plan as the result of an update or amendment to the plan, the official controls must be amended by the community within 9 months following the update or amendment to ensure the official controls do not conflict with the comprehensive plan. Local governmental units must adopt official controls as described in their adopted comprehensive plans and must submit copies of the official controls to the Council within 30 days following adoption, for informational purposes.

[Minn. Stat. 473.865, Subd. 2](#)

[Minn. Stat. 473.864, Subd. 3](#)

[Minn. Stat. 473.864, Subd. 1](#)

Statute identifies additional elements that may be included in the comprehensive plan. These are additional elements are discussions of economic development, intergovernmental coordination, and urbanization and redevelopment.

[Minn.Stat.473.859 subd. 2 \(b\)](#)

The contents of the comprehensive plan are not limited to the content requirements of the Metropolitan Land Planning Act and Council policies. A municipality may choose to include additional information in its comprehensive plan, such as master plans, redevelopment plans, other public facilities plans such as hospitals or schools, or special studies.

The community may also choose to describe the planning process and the roles of community residents, the business community, Planning Commission members and others in developing the local comprehensive plan. Goals, objectives, and criteria that are developed with community visioning activities can be referenced in the comprehensive plan.

Economic development

The economic development element identifies types of mixed use development, expansion facilities for businesses, and methods for developing a balanced and stable economic base.

Intergovernmental coordination

By discussing intergovernmental coordination, the community formally acknowledges its relationship with other communities, adjacent and nearby local government units, the region and the state. This acknowledgement is especially appropriate when communities participate in joint planning and decision-making in order to site public schools, build public facilities or share public services.

Urbanization and redevelopment areas

The timing and sequence of development and redevelopment may be discussed here. This discussion assists the municipality in its plans for improving local infrastructure. It also provides an overview of regional infrastructure needs.

[Minnesota Statutes 473.859, Subd 6](#)

Overview of plan requirements

The background chapter sets the stage for the rest of the comprehensive plan. It presents the municipality's vision of itself: what distinguishes it, what it values and how it will develop in concert with the whole region.

The foundation of the comprehensive plan:

- includes the municipality's **policies and objectives** ([Handbook, page 2-2](#))
- identifies the Metropolitan Council's **planning area designation** for the municipality ([Handbook, page 2-2](#))
- includes the Metropolitan Council's municipality level **forecasts** for population, household numbers, and employment ([Handbook, page 2-4](#))

Resources

The Metropolitan Council's staff provides information and tools to assist the municipality in its local planning efforts. Print resources include Metropolitan Council policy information as well as research.

The Metropolitan Council's [Community Development Division staff](#) is committed to helping local planners directly. Staff members can provide such information as Geographic Information System (GIS) maps, forecasts and demographic data, names of local planning consultants and excerpts from other local comprehensive plans.

The municipality's assigned Metropolitan Council [sector representative](#) can direct local planners to appropriate staff and print resources. Technical staff with expertise in specific areas may also be reached directly. Planning staff and their areas of expertise are listed on the Metropolitan Council's website.

[Minnesota Statutes 473.859](#)

<http://www.metrocouncil.org/planning/assistance/staff.htm>

<http://www.metrocouncil.org/planning/assistance/sectorreps.htm>

Include policies and objectives

Policies and objectives establish the municipality's direction and guide general land use decisions. This chapter describes the municipality's objectives and sets out the policies, standards and programs that constitute the overall approach the municipality intends to follow to reach those objectives.

The focus is on policies and objectives that guide land use, development, redevelopment and preservation of land and water within the municipality's jurisdiction. Specific policies relating to particular systems and exact implementation strategies are included in later chapters of the comprehensive plan.

Describe standards and programs for implementing the plan

The background chapter must include a description of standards and programs to be used in implementing the comprehensive plan. These standards provide broad direction for the municipality in establishing its official controls. Programs, such as the capital improvement program, are included here to the extent that they identify the timing and financing mechanisms for implementing the comprehensive plan.

Strategies for regional development relate directly to growth patterns within the region. In the *2030 Regional Development Framework*, municipalities are identified according to their **regional planning area designation**. Depending on that designation, a municipality may choose within a range of strategies for accommodating expected growth.

[See the Framework's "Planning Areas" map of planning area designations throughout the region.](#)

The Metropolitan Council also provides a [table that identifies each municipality's planning area designation or designations.](#)

<http://www.metrocouncil.org/planning/framework/FWPlanningAreas8x11.pdf>

[Table of municipalities' planning designations](#)

What do regional planning area designations represent?

Definitions of planning area designations

[The planning area designation and related policies identify the Metropolitan Council's expectations for the amount, location and standards for development.](http://www.metrocouncil.org/planning/framework/Framework.pdf#page=20) The community's designation therefore guides local plans, policies and forecasts. As part of the background section, the comprehensive plan should identify the community's regional planning area designation and relate its growth expectations to it.

<http://www.metrocouncil.org/planning/framework/Framework.pdf#page=20>

A community's planning area designation is based on its geographic location, amount of land available for development, existing development patterns, planned land uses and availability of infrastructure. The *2030 Regional Development Framework* places each municipality in one or more of the following designations:

- **Developed communities** are those in which more than 85% of the land within the borders identified in 2000 is developed.
- **Developing communities** are those in which more than 15% of the land within the borders identified in 2000 is vacant or available for development.
- **Rural centers** are small towns located throughout the rural area.
- **Rural growth centers** are those rural centers that are both interested in and showing a potential for growth.
- **Rural residential areas** are areas currently developed at one unit per 2½ acres or less. These areas have no plans to provide urban infrastructure such as centralized wastewater treatment.
- **Diversified rural communities** are the sparsely developed parts of the region that host the widest variety of farm and non-farm land uses. They include a mix of clustered and large-lot residential areas in limited amounts.
- **Agricultural areas** are large contiguous land areas planned and zoned to maintain agriculture as the primary land use.

Some municipalities have more than one designation

The *2030 Regional Development Framework* assigns some municipalities on the developing edge of the metropolitan area more than one planning area designation. The double designation reflects a division within the municipality between areas planned for urban growth and served by the regional sewer system and areas maintained for either agricultural or rural land use and served by septic systems.

Planning area designation guides growth strategies

Strategies to accommodate expected growth depend in great part on the growth patterns reflected in the community's planning area designation. [The Planning Areas Map](#) in the *2030 Regional Development Framework* illustrates regional growth patterns by planning area designation. The Framework also includes [strategies appropriate to each planning area designation](#).

The background chapter must include total population, household and employment forecasts. These serve as the foundation for the rest of the comprehensive plan. The *2030 Regional Development Framework* includes forecasts for household number, population and employment for the years 2010, 2020 and 2030. The Metropolitan Council, with input from municipalities, calculates these forecasts using regional statistics. **Forecasts are updated periodically as new information becomes available.** [The Metropolitan Council's website contains the most current version of the forecasts.](#)

The Metropolitan Council's forecasting methodology considers historic trends, 2000 census data, current demographic data, annual monitoring of building permits and employment data and local comprehensive plans. Appendix A of the *2030 Regional Development Framework* provides detailed information on the methodology used in preparing the regional forecasts.

<http://www.metrocouncil.org/planning/framework/FWPlanningAreas8x11.pdf>

<http://www.metrocouncil.org/planning/framework/Framework.pdf#page=16>

<http://www.metrocouncil.org/planning/framework/documents.htm#forecasts>

Forecasts at the regional, county and municipal levels are expressed in the *2030 Regional Development Framework*. At the regional level, the Metropolitan Council forecasts that, between 2000 and 2030, the metropolitan area will grow by 1 million people in half a million households and 583,000 jobs.

The *2030 Regional Development Framework* forecast tables (Appendix A) include [total projected population, household number, and employment growth for each municipality.](http://www.metrocouncil.org/planning/framework/documents.htm#forecasts)

In addition to the growth forecasts, the Metropolitan Council provides [annual estimates](http://www.metrocouncil.org/metroarea/stats.htm) of the previous year's population, household number, and employment.

<http://www.metrocouncil.org/planning/framework/documents.htm#forecasts>

<http://www.metrocouncil.org/metroarea/stats.htm>

How are forecasts used?

The Metropolitan Council translates the forecasts into regional infrastructure needs for roads and highways, transit service, wastewater infrastructure, water supply and parks. The forecasts also become the basis for each municipality to plan for water, wastewater, roads, and parks. **The comprehensive plan must demonstrate congruence among key systemic elements:**

- forecasted growth
- planned land use
- residential and employment densities, and
- infrastructure plans.

What forecast information must be included?

Communities must use Metropolitan Council forecasts in updating their comprehensive plans.

<http://www.metrocouncil.org/planning/framework/documents.htm#forecasts>

**Why use
Metropolitan Council
forecasts?**

If a municipality bases its comprehensive plan on forecasts other than those provided by the Metropolitan Council, the plan will likely not be in conformance with the regional system plans and may represent a departure from, or impact to, the regional policy plans.

If a comprehensive plan includes a forecast that is lower than the *2030 Regional Development Framework* forecasts, the regional systems will be underutilized and the unplanned growth will need to be accommodated elsewhere in the region. A comprehensive plan that is inconsistent with Metropolitan Council policy results in the inefficient use of infrastructure.

If a comprehensive plan includes a forecast that is higher than planned in the *2030 Regional Development Framework*, adequate infrastructure may not be available to accommodate the growth.

Contact your [sector representative](#) with questions.

**What if the
municipality
includes sewered
and unsewered
areas?**

The **system statements** of municipalities with existing and planned development served by more than one wastewater treatment method will include a table that separates the forecasted growth areas into “sewered” and “unsewered.” Comprehensive plan documents for these municipalities must also include a forecast table for the sewered and unsewered areas of growth.

Separating these areas assists municipalities with planning for both urban and rural land uses. The forecast for the sewered area is the basis for planning land uses at urban density levels served by public facilities. The forecast for the unsewered area is the basis for maintaining agricultural uses or rural character while allowing some growth.

<http://www.metrocouncil.org/planning/assistance/sectorreps.htm>

Forecasts and demographic resources

Each municipality's September 2005 [system statement](#) includes the municipality's total population, household numbers and employment figures, based on the 2030 Regional Development Framework forecasts.

<http://www.metrocouncil.org/planning/assistance/SystemStatements.htm>

Forecasts may be amended

The forecasts in the **regional system policy plans** are also based on the forecasted growth in the *2030 Regional Development Framework*. **These forecasts may be amended from time to time, in response to comprehensive plan amendments.**

The Metropolitan Council's [current municipal forecasts are online](#) along with the current estimates of population, households and employment, and other demographic trends relevant to forecasting.

<http://www.metrocouncil.org/planning/framework/documents.htm#forecasts>

Water Resources Management Policy Plan - Appendix A [provides growth forecasts for municipalities served by the regional wastewater system](#). These numbers, which are broken down by total population, household and employment, serve as the basis for decisions regarding the regional wastewater (sewer) system.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP_May2005_Appendices-a.pdf#page=7

[County level demographic information and forecasts](#) are included in the *2030 Transportation Policy Plan*.

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPPAAppendixE.pdf>

The Metropolitan Council website shows [the most current population, household and employment estimates, as well as historical information and demographic trends](#) relevant to forecasting,

<http://www.metrocouncil.org/metroarea/stats.htm>

[Additional demographic data from the 2000 census](#) is also available on the Metropolitan Council's website.

<http://www.metrocouncil.org/Census/census2000.htm>

Overview of plan requirements

State law requires all municipalities to include a land use plan that assesses how land and water is used now and in the future. Land use planning begins with forecasts of growth in population, household number and employment. Once those figures are established for the region and the municipality, local planners must identify where residents will live, work, play and shop. Based on these assessments, they create plans for development and redevelopment.

[Minn. Stat. 473.859, Subd. 2](#)

The development and redevelopment anticipated in the land use plan drives the need for local and regional infrastructure, including sanitary sewer, water, roads and parks. For infrastructure planning to occur effectively at the regional level, the local land use plan must contain complete and accurate information in the following areas:

- Inventory of **existing land** and water within the municipality showing current land use in terms of standard categories ([Handbook, page 3-2](#))
- Plan **future land use** ([Handbook, page 3-3](#)) and **stage development to accommodate forecasted growth** including location, intensity and extent of development ([Handbook, page 3-7](#))
- **Housing plan** ([Handbook, page 3-8](#))
- Strategies for **protecting special resources** including solar access, historic preservation, aggregate and Critical Area ([Handbook, page 3-10](#))

Resources

[Metropolitan Council staff](#) are available to answer questions related to land use, mapping, housing, natural resources and Critical Area and Minnesota National River and Recreation Area plans. Planning staff and their areas of expertise are listed on the Metropolitan Council's website.

<http://www.metrocouncil.org/planning/assistance/staff.htm>

The Metropolitan Council encourages local units of government, staff and local officials to contact their Metropolitan Council [sector representative](#) with general questions regarding Metropolitan Council land use policies.

<http://www.metrocouncil.org/planning/assistance/sectorreps.htm>

To plan for regional infrastructure, the Metropolitan Council needs accurate information about how each municipality allocates its land for residential, commercial, industrial, public, parks and open space, institutional and mixed uses. The land use inventory needs to map and tabulate existing land use that shows both:

1. current land use and surface water
2. land use and surface water as previously planned in the municipality's last comprehensive plan update.

Land uses should be described in terms of the [standard land use categories used by the Metropolitan Council](#).

<http://www.metrocouncil.org/planning/LPH/LandUseCategories.pdf>

Map existing surface water and land uses

[This map identifies all surface water resources including lakes, wetlands, rivers, streams and drainage courses](#). It also shows adjoining lands that affect these water resources. Mapping these resources helps the municipality identify areas to be maintained for less intense land uses or for public open space. Mapping may also help planners to evaluate the effect of increased intensity on the water resource.

<http://gis.metc.state.mn.us/landuse2k/maps2000.asp>

Map previously planned land use

The inventory map of **previously planned land use** must show the location and extent of land previously planned for residential, commercial, industrial, public, parks and open space, institutional and mixed uses, as described in the municipality's last comprehensive plan update. [Text and a table associated with this map](#) should describe each of the categories identified on the map and identify the amount of existing acreage.

<http://www.metrocouncil.org/planning/LPH/forms.htm>

Use Metropolitan Council standard land use categories

Regional planning is made more efficient when local municipalities use the Metropolitan Council's [standardized land use categories and definitions](#). Doing so facilitates review of the comprehensive plan and simplifies the compilation of regional land use maps and geographic information system datasets. Nonetheless, municipalities may choose to use their own land use categories and definitions if they prefer to do so.

The Metropolitan Council's Land Use Categories:

<http://www.metrocouncil.org/planning/LPH/LandUseCategories.pdf>

Mapping resources

The Metropolitan Council's [Geographic Information Systems \(GIS\)](#) unit provides maps and data about every aspect of the region, including both natural and constructed features. Information is presented through [interactive and scalable GIS maps and related sets of data](#).

<http://gis.metc.state.mn.us/>

<http://www.datafinder.org/catalog.asp>

Map and describe future land uses

To maintain the viability and economic efficiency of the region's infrastructure, it is essential that each municipality accommodate its share of population growth. Metropolitan Council forecasts for each municipality provide the targets the comprehensive plan must meet.

The comprehensive plan must include a **map and table showing how the municipality plans to accommodate growth** in its population, households and employment. To be complete, the plan for future land use must include accurate and complete information in the following areas:

- map showing surface water areas the municipality plans to maintain
- map showing the municipality's planning area designation
- map showing the location and extent of planned land uses
- [table identifying the acreage of each land use category](#) in 2010, 2020 and 2030
- description of the land use categories shown in the planned land use map including the types of buildings or uses allowed within each land use designation

Use Metropolitan Council planning strategies

Every municipality needs to follow the [regional plan strategies listed under "Community Role" in the 2030 Regional Development Framework](#). Incorporating these strategies into the comprehensive plan ensures that land use patterns accommodate growth, make efficient use of existing and planned infrastructure, provide a mix of housing opportunities and protect natural resources.

Land Use Category Table:
<http://www.metrocouncil.org/planning/LPH/forms.htm>

<http://www.metrocouncil.org/planning/framework/Framework.pdf#page=21>

Use the municipality's planning area designation

The *2030 Regional Development Framework* assigns each municipality a **planning area designation** (such as developed, developing, rural residential, etc.). The designation is based on the municipality's location in the region, forecasted growth, availability of infrastructure and existing land uses. [See the Framework's "Planning Areas" map of planning area designations throughout the region.](#)

<http://www.metrocouncil.org/planning/framework/FWPlanningAreas8x11.pdf>

Ensure conformance to system plans and forecasts

The municipality's planning area designation indicates the location, intensity and extent of development that must be incorporated into its land use plan. The *2030 Regional Development Framework* identifies [specific strategies that municipalities within each planning area designation must incorporate into their land use plans.](#)

<http://www.metrocouncil.org/planning/framework/Framework.pdf#page=20> (Ch. 3, pages 19-29]

A municipality's growth capacity depends on its available land supply and planned density. The municipality must document that its land use plan is consistent with the *2030 Regional Development Framework* forecasts and conforms to the *System Plans*. To do so, the municipality must consult:

- the municipality's planning area designation and corresponding policies relative to density
- forecasts expressed in the municipality's system statement

Calculate the capacity to accommodate development

Use the Metropolitan Council's [standard calculation of net development acre and net density](#) to measure the municipality's capacity to accommodate residential development. The minimum density requirement is three units per net developable residential acre. Net residential acreage is calculated by subtracting from gross acres wetlands and water bodies, public parks, arterial streets and natural resources mapped and protected by ordinance in the comprehensive plan update.

Net Density Worksheet (MS Word and/or Excel):
<http://www.metrocouncil.org/planning/LPH/forms.htm>

Ensure conformance regarding residential development

The Metropolitan Council calculates the capacity to accommodate residential growth by multiplying the lowest allowed density in the planned land use density range by the net residential acreage. A municipality should not use “zero” as a lowest allowed density for sewer development.

To conform to the region’s *system plans*, the land use plan must demonstrate residential development at appropriate densities to accommodate the growth forecasted for the municipality.

The *2030 Regional Development Framework* and *Water Resources Management Policy Plan* require municipalities to plan for **an average net residential density of at least three units per net residential acre**. A plan that fails to establish the intention to achieve a minimum average residential density of three units per net residential acre in sewer development areas lacks conformance with Metropolitan Council policy.

For municipalities along regional transportation corridors

To be consistent with the *2030 Regional Development Framework*, municipalities that include:

- [a regional transportation corridor](#)
- [transit route](#) or
- [transit facility](#)

should plan for development that links land uses to transportation service.

Locations near transit hubs or transportation corridors, and especially locations near rail stations, represent high-level service opportunities. These areas are best suited to mixed land use, more intense commercial development or high-density housing.

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=25

http://metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter2_Final.pdf#page=5

http://metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=15

Evaluate adequacy of local infrastructure

Besides mapping and tabulating development overall, the land use plan must show **stages of development in five-year increments** (existing, 2010, 2015, 2020, 2025, and 2030). Using the Metropolitan Council's templates simplifies the task of staging development and land use. [The land use and development staging tables show the number of acres allocated within each land use category.](#)

For each five-year stage, the plan must include **an evaluation of the implications for all local infrastructure**. The tables and discussion must demonstrate that the municipality is capable of providing necessary local facilities and services to accommodate its planned growth.

For more information, see [Forecasts \(Handbook, Sect. 2\)](#) and [Sewer Flow \(Handbook Sect. 5\)](#)

Consider impact on sewer system

Of particular importance is the impact of growth on the region's sewer system. For that reason, **the staging tables must show the volume of anticipated sewer flow**. This volume must correspond with the five-year increments in the plans of the municipality's interceptor service area.

Metropolitan Council commits to provide sewer service

Once a comprehensive plan is approved, the Metropolitan Council will provide sufficient sewer infrastructure capacity to meet 20-year growth projections and long-term service area needs identified in the plan. Any capital improvements that the Metropolitan Council needs to provide will be scheduled so that the infrastructure is available at least two years prior to the need identified in the approved comprehensive plan.

Land Use Table in 5-year Stages worksheet:

<http://www.metrocouncil.org/planning/LPH/forms.htm>

Sect. 2 Background - Forecasts:

<http://www.metrocouncil.org/planning/LPH/LPHSect2.pdf#page=5>

Sect. 5 Water Resources:

<http://www.metrocouncil.org/planning/LPH/LPHSect5.pdf#page=3>

(sewer flow section)

Worksheet that calculates sewer flow based on land use:

<http://www.metrocouncil.org/planning/LPH/forms.htm>

Use Metropolitan Council regional housing needs projections

By law, the comprehensive plan must include a housing element and implementation program that address existing and projected housing needs. The housing plan:

- acknowledges the community's share of the region's need for low- and moderate-income housing
- includes an implementation section identifying the programs, fiscal devices, and official controls the community will use to address their housing needs

The comprehensive plan may include an assessment of current housing stock and goals, policies and programs to assist the municipality in decision-making regarding the preservation of its current housing stock and the development of new units.

The Metropolitan Council has determined the regional and local need for low and moderate income housing in the decade beginning 2011. Figures reflecting [each municipality's share of the region's need for additional low and moderate income housing for 2011 through 2020](#) are available on the Council's website.

[Minn. Stat. 473.859 Subd. 2\[c\]](#)

[Minn. Stat. 473.859, Subd 4](#)

Summary Report: Determining Affordable Housing Need in the Twin Cities 2011 – 2020:
<http://www.metrocouncil.org/planning/housing/AffHousingNeedJan06.pdf>

Include a housing implementation program

The comprehensive plan must include a housing implementation program that identifies official controls, programs and fiscal tools the municipality will use to implement its housing goals and policies. Local controls may include zoning and subdivision ordinances, building codes, design requirements and the approval process itself. These impact both the type and cost of new housing.

In its housing implementation program, the municipality identifies the range of efforts it will employ to facilitate construction of affordable housing and to expand local housing options. Included in this section are:

- affordable housing assistance, development and preservation programs available through the local, county, state or federal government
- fiscal tools such as revenue bonds, tax increment financing, or tax abatement
- official controls and land use regulation aimed at facilitating construction of affordable and lifecycle housing
- policies or programs which guide a sufficient amount of land for development at densities that may facilitate greater housing affordability, and specifically, to accommodate the municipalities share of the regional need.

Assess current housing stock

Assessment of the current housing stock should include the number, types, tenure, value, monthly rent, age and condition of residential structures. Where appropriate, sub-regional or broader comparisons with other municipalities should be included to better explain the existing housing conditions.

Include goals, policies and programs

Goals and policies typically address the need to add low-and moderate-income affordable housing or other housing to meet special needs, other development and redevelopment expectations, housing maintenance and preservation, density and diversity of housing type.

[Minn. Stat. 473.859, Subd 4](#)

Historic preservation and solar access

Law requires that local comprehensive plans address the protection of historical sites, solar access, and aggregate deposits. The Metropolitan Council has developed a specific policy regarding protection of aggregate deposits, but not for historical preservation or solar access.

Requirements for an historic preservation element and "an element for the protection and development of access to direct sunlight for solar energy systems" are spelled out in statute.

[Minn. Stat. 473.859, Subd. 2\[b\]](#)

Aggregate resources

Municipalities must consult the [Minnesota Geological Survey, Aggregate Resources Inventory of the Seven-County Metropolitan Area](#) for the location of identified aggregate resources.

[Minn. Stat. 473.859, Subd 2\[d\]](#)

If an [aggregate resource has been identified](#) within the municipality, its land use plan must show:

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

- areas and type of aggregate on the existing and planned land use map
- land use plans that address and minimize potential land use conflicts
- planning and regulatory measures to ensure that aggregate resources are extracted prior to urbanization of an aggregate-rich site

The Metropolitan Council and the Department of Natural Resources (DNR) developed a report that inventories aggregate resources.

This report is the *Minnesota Geological Aggregate Resources Inventory of the Seven-County Metropolitan Area*. It is Survey Information Circular No. 46 (IC-46). [See the DNR link to this report on the Metropolitan Council's resources web page.](#)

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

**Mississippi River
corridor**

If any portion of a municipality is located within the metropolitan Mississippi River Critical Area Corridor, that portion must be managed in such a way that land use meets federal and state guidelines.

Affected municipalities should review their Critical Area plans to ensure consistency between the guidelines and their land use plans and updates. Municipalities may also review and reconsider the protection and enhancement requirements of [Mississippi National River and Recreation Area \(MNRRA\) Plan as part of the comprehensive plan update process.](#)

[The Metropolitan Council's resources web page](#) contains resources relating to the Mississippi River Critical Area and Mississippi National River and Recreation Area programs (CA/MNRRA) and a link to the DNR website's material on this subject.

[Critical Areas Act of 1973](#)[Minn. Stat. 116G](#)

<http://www.revisor.leg.state.mn.us/stats/116G/15.html>

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

**Transportation
Policy Plan**

The public facilities plan receives particular scrutiny because it covers areas that fall within the Council's key function, overseeing the economical and rational development of the region's infrastructure, including transportation. The transportation plan is a critical part of the public facilities plan.

The transportation plan must encompass existing and planned modes of transportation, both public and private. All modes of transportation are included: transit, highways and roads, passageways for non-motorized vehicles, freight movement and aviation.

[The 2030 Transportation Policy Plan](#) emphasizes a multi-modal transportation system that includes transit, highways and roads, non-motorized transportation, aviation and freight movement. The transportation plan needs to include policies and strategies for developing a multi-modal transportation system.

[Minn. Stat. 473.859, Subd 3](#)

[Minn. Stat. 473.859, Subd. 3, \(1\)](#)

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04CoverContentsPreface_Final.pdf

Overview of plan requirements

The local transportation plan must describe, designate and schedule the location, extent, function and capacity of facilities for all transportation modes within the municipality. To ensure the rational and economical development of the regional transportation system, the local transportation plan must include or address the following components:

- an assignment of socio-economic forecasts to **Traffic Analysis Zones (TAZ)** ([Handbook, page 4-3](#))
- a **highway and roads** plan that maps and describes existing roads and planned improvements, analyzes traffic volumes, addresses safety and capacity issues ([Handbook, page 4-3](#))
- a **bike and pedestrian** plan ([Handbook, page 4-6](#))
- **special situations**, as applicable, such as land use planning in high density subareas of the region, corridor studies and right of way preservation ([Handbook, page 4-7](#))
- a **transit plan** for facilities and service ([Handbook, page 4-8](#))
- an **aviation plan** that identifies aviation related facilities, addresses airspace protections ([Handbook, page 4-10](#))

Requirements and resources for addressing each of these components are outlined on the pages specified above.

The Metropolitan Council's [Transportation Policy Plan](#) addresses the need to provide services for a growing population that demands more transportation options. To develop regional forecasts and plan for regional roads and highways, the Metropolitan Council needs to know the demographic forecasts for smaller geographic areas known as **Traffic Analysis Zones**.

The transportation plan must include the municipality's allocation of the Metropolitan Council's 2030 population, household and employment forecasts. These must be allocated, in turn, to each of the Traffic Analysis Zones (TAZ) to reflect planned land use. [Traffic Analysis Zone information and related demographic data](#) based on the 2000 Census are available to use in preparing the municipality's estimates of future traffic volumes.

The allocation may be displayed in either map or [table format](#).

The Metropolitan Council allocates an appropriate portion of forecasted regional growth to each municipality, [but the distribution of that growth within the municipality depends on local land use decisions](#). The intensity and extent of existing and planned development impacts how jobs and households are distributed in the municipality. That distribution determines traffic flow.

The local transportation plan must

- map the road and highway system
- assign forecasted growth to Traffic Analysis Zones
- relate the transportation system to land use
- address capacity and safety issues

Transportation problems and opportunities resulting from land use decisions need to be identified.

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixK.pdf#page=12>

http://www.datafinder.org/metadata/taz_2000_model.htm

See TAZ template:

<http://www.metrocouncil.org/planning/LPH/forms.htm>

<http://www.metrocouncil.org/planning/framework/FrameworkAppendixA.pdf>

Identify functional classification

The comprehensive plan must map the functional classification of existing and proposed roads within the municipality. [A map of the principal and "A" Minor arterials recognized by the region](#) may be found in the Metropolitan Council's GIS Datafinder. [The criteria and assumptions used to define functional classification](#) are included in Appendix F of the Transportation Policy Plan. The principal arterial system, also known as the metropolitan highway system, was adopted by the Metropolitan Council as part of the *Transportation Policy Plan*. The "A" Minor arterial system is maintained by the Transportation Advisory Board. If a municipality determines that a change in the "A" minor arterial system is warranted, a request for the change can be made to the Transportation Advisory Board.

<http://www.datafinder.org/catalog.asp#Transportation>

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixF.pdf>

Map streets and highways

For each of the principal and A-minor arterials, the map must show:

- existing and proposed number of lanes
- current daily traffic counts according to the [Minnesota Department of Transportation's traffic volume maps](#)
- forecasted 2030 traffic volumes

<http://www.dot.state.mn.us/tda/maps/trafficvol.html>

Options for displaying traffic allocation

The comprehensive plan should include narrative explaining how the local traffic forecasts were developed. Two traffic forecasting options are available, depending on the municipality's planning area designation.

- Developing communities may use the Metropolitan Council's regional traffic forecasts as long as they reflect the municipality's expected growth.
- Developed and rural communities where traffic growth is limited may need only a trend analysis to forecast traffic.

Include planned improvements to regional highways

The municipality's comprehensive plan should include the [planned improvements to the metropolitan highway system listed in Tables 4-9 and 4-10 of the *Transportation Policy Plan*](#).

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=35

Connect land use and transportation

[The Transportation Policy Plan's policies 1 and 18](#) address the interdependence of land use, natural resource protection and transportation planning as these relate to reducing congestion.

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf

Document the need to expand facilities

In its transportation planning for the region, the Metropolitan Council's goal is that locally generated trips will not exceed the capacity of local or regional transportation facilities. The Metropolitan Council relies on local information regarding forecasted growth and traffic impact to plan for appropriate expansions to the existing system.

The local transportation plan must identify the design capacity of the local, county and regional road network and document whether anticipated growth will exceed capacity. If the land use plan includes expansion to accommodate regional growth, the transportation plan should document the need to provide new or expanded transportation facilities and capacity.

Identify potential safety issues

The plan must identify safety problems that the municipality anticipates as the comprehensive plan is implemented and development occurs. Correctable causes of vehicle, bicycle and pedestrian accidents are considered in allocating resources to highway and roadway improvement projects.

The governmental unit responsible for each road should include an inventory of safety issues and a plan for improvement in its transportation plan. Possible improvement strategies include access management, intersection changes and signal timing.

Incorporate "access management" guidelines

The Minnesota Department of Transportation and county jurisdictions have authority to deny access to principal and minor arterials where access rights have been purchased. However, counties and municipalities have authority regarding access to "A" minor arterials and local streets. [The Transportation Policy Plan's policy 13 addresses access management of regional highways and "A" minor arterials](#) as a way for municipalities to address safety and capacity issues.

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf#page=15

[The access management guidelines of the Minnesota Department of Transportation](http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf) or of the county need to be incorporated into the transportation plans of these municipalities. Access management guidelines also need to be incorporated into subdivision and zoning ordinances.

Because trips by bicycle or on foot are short, accommodations for these forms of travel are planned at the local rather than the regional level. Therefore, the *Transportation Policy Plan* does not include a map of bicycle and pedestrian passageways. It does, however, include [policies encouraging municipalities to plan for these modes of travel and to coordinate their plans with neighboring municipalities](http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=46).

In order to be eligible to apply for federal transportation funds to construct bicycle and pedestrian facilities, municipalities must include in their transportation plans:

- a description of the municipality's policies and plans regarding bicycle and pedestrian systems and programs
- a map showing on-road and off-road bikeways such as signed routes, striped on-street bicycle lanes, and off-road bicycle or multi-use paths
- a description of bicycle and pedestrian accessibility to transit corridors and transit facilities

The Metropolitan Council and the Minnesota Department of Transportation have compiled a [map of bikeways in the region](http://www.metrocouncil.org/planning/transportation/Bikeways/maps.htm).

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=46

<http://www.metrocouncil.org/planning/transportation/Bikeways/maps.htm>

Core cities, U of M and Airport South

Additional information is required from areas with the most compact land use, those with specific right of way responsibility, and those participating in corridor or sub-area studies.

Four specific areas within the region have the most compact land use and the greatest number of trip destinations. These areas are:

- Downtown Minneapolis
- Downtown Saint Paul
- University of Minnesota
- Airport South / Mall of America in Bloomington

These areas require transportation facilities and services that are significantly different from others. Therefore, the transportation plans of these municipalities and counties [must include an analysis of and strategies for moving people and freight into, out of, and within these areas.](http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf#page=24)

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf#page=24

Municipalities needing to preserve right of way

Local governments are responsible for identifying and preserving rights of way for transportation uses, such as roads, transit, bikeways and walkways. [Policy 16 in the Transportation Policy Plan identifies the need to preserve the rights of way of planned transportation corridors.](http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf#page=19) The transportation plan must identify future right of way needs and describe procedures to preserve them, including official mapping.

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter3_Final.pdf#page=19

Municipalities involved in corridor and sub-area studies

The Metropolitan Council regularly participates with other agencies and jurisdictions in highway corridor studies, transitway studies and some "A" minor arterial studies. These studies examine concerns about land use, access capacity, level of service, geometrics, safety and impacts to the environment. The completed study recommendations are generally adopted by all participants and may be implemented as funding becomes available.

Describe and map transit service

Appendix G of the *2030 Transportation Policy Plan* lists [the studies adopted by the Metropolitan Council as of December 2004](#).

Recommendations from these studies should be incorporated into the transportation plans of participating cities and counties and should be used by implementing agencies to guide improvements in the corridor.

The *2030 Transportation Policy Plan* includes strategies for reaching the regional transit goals of increasing current ridership by 50 percent by 2020 and doubling it by 2030. To meet these goals in a cost effective manner, [the Transportation Policy Plan outlines policies and standards for developing transit service, transitways and transit facilities](#).

The transit component must include the following information in order to identify transit service available to local residents and employers:

- [Description of existing transit routes and paratransit services](#). These are found in the Metro Transit website.
- [Identification of the municipality's transit market area](#) as shown in Figure 4-3 and Table 4-1 in the Transportation Policy Plan.
- [A policy that the municipality will work with the Metropolitan Council or with an opt-out transit provider](#) to determine future transit services consistent with the municipality's transit market area and its associated service standards and strategies.
- [Illustration of existing and planned transit corridors](#) shown in Figure 4-1 and 4-2 of the *2030 Transportation Policy Plan*. Planned station locations for transitways shown in Figure 4-2 should also be shown.

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixG.pdf>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=1

<http://www.metrotransit.org/serviceInfo/mapSystem.asp>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=9

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixM.pdf>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=3

Map transit facilities

In its planning for expansion of the transit system, the Metropolitan Council identifies the locations of existing and future facilities in the *Transportation Policy Plan*. Facilities include shelters, transit stations and park-and-ride lots, as well as support facilities such as bus garages and layover facilities.

To be consistent with the *Transportation Policy Plan*, the land use map and transportation related maps in the comprehensive plan must identify the location of:

- Existing park-and-ride facilities in the municipality. Figure 2-1 of the Transportation Policy Plan shows [existing and programmed park-and-ride facilities funded and located through 2008](#).
- [Potential park-and-ride facility sites](#) identified in Figures 5-1 through 5-4 of the Park and Ride Facility Site Location Plan.
- [Existing and planned passenger facilities such as transit centers and stations](#) identified in Figure 4-5 and in the corresponding text in the *2030 Transportation Policy Plan*.
- [Transit support facilities such as maintenance facilities and garages](#) identified in Figure 4-6 of the Transportation Policy Plan.

http://www.metrocouncil.org/parkridefacilitysitelocation/Fig2-1_RegionalParkandRideSystem2008Final.pdf

<http://www.metrocouncil.org/parkridefacilitysitelocation/plan.htm>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=14

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=17

Airspace protection

The Metropolitan Council's *2030 Transportation Policy Plan* includes an aviation component. The *1996 Aviation Policy Plan* remains in effect as part of the *2030 Transportation Policy Plan*. [The *Land Use Compatibility Guidelines* have been updated and are included in Appendix H of the *2030 Transportation Policy Plan*.](#)

The Metropolitan Council's Transportation Policy Plan reflects [Federal Regulation Title 14, Part 77](#) which establishes standards and notification requirements for objects affecting navigable airspace. All municipalities must protect airspace from potential electronic interference and obstructions to air navigation. As proof that they have done so, they must include a policy and text regarding their notification to the Federal Aviation Agency.

To notify the Federal Aviation Agency, municipalities must submit Form 7460. They must also demonstrate that they have adopted local codes and ordinances for control of objects affecting navigable airspace including construction exceeding 200 feet above ground level at certain distances from aviation facilities. [Links to information on these requirements are available in the Resources section of this Handbook.](#)

Airports

Figure 2-15 of the *Transportation Policy Plan* identifies the one major international airport, one intermediate airport that serves corporate users, six reliever airports and three special purpose airports.

Municipalities within the Airport Influence Area of one of these airports [must identify it in their transportation and land use maps and address additional planning and development considerations.](#)

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter4_Final.pdf#page=45

<https://www.oaava.faa.gov/oaava/external/content/7460-1.pdf>

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPP04Chapter2_Final.pdf#page=25

Airport influence areas

[Appendix H of the *Transportation Policy Plan* includes updated land use compatibility guidelines for airports.](#) In addition to these, the local transportation plan of a municipality within an airport influence area must address these guidelines:

- Height and safety zoning
- Aircraft noise impacts and mitigation
- Airport development and operation
- Environmental and infrastructure needs

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixHRevised.pdf>

Heliports

[Municipalities with heliports, or those desiring to regulate establishment of heliports, must adopt ordinances and guidelines for these sites.](#) The unique operational characteristics of helicopters allow them to land and take off at airports or locations such as hospitals or industrial parks.

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPAppendixHRevised.pdf#page=12>

The *Twin City Regional Heliport Feasibility Study* provides guidelines for preparing and adopting ordinances for heliport sites. The report (Metropolitan Council Publication No. 559-90-089) may be requested from the Council Library and [Data Center](#).

data.center@metc.state.mn.us

Appendix H of the *Transportation Policy Plan* also includes updated land use and noise compatibility guidelines for heliports. It also offers guidelines for preparing and adopting ordinances for heliport sites.

Seaplane activities on surface waters in the metropolitan area are regulated by the Minnesota Department of Transportation. [A link to that site's discussion of seaplane activities is available in the Resources section of this Handbook.](#)

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

Municipalities having lakes designated for seaplane activity must identify these lakes in the transportation plan. Use of designated waters is seasonal and can vary considerably. For purposes of safety and compatible land use, municipalities should recognize these areas on land use and transportation plan maps.

Special aviation facilities

Facilities such as radio beacons or other air navigation aids sited at off airport locations are usually owned or controlled by the federal or state government. However, areas around these facilities must be protected through local ordinance and notification processes.

If a facility that requires protection is identified in the municipality's system statement, the municipality must identify the facility in its transportation plan and land use map. It must then affirm that surrounding land is protected against physical encroachment that could affect security or cause impacts to electronic signals.

Resources

Further details regarding these requirements may be found in pages 59 through 76 of the 1996 Aviation Policy Plan. The *1996 Aviation Policy Plan* is not available online. However, paper copies are available from the Metropolitan Council's Data Center, and they [may be requested by email](#).

Data.center@metc.state.mn.us

Management of the region's water supply, protection of the surface water resources, and treatment of its sewage directly affect the health of citizens of all municipalities. For this reason, statutes and Metropolitan Council policies specify exact standards and requirements that must be met in this section of each municipality's comprehensive plan.

A growing population and increasing demand present a challenge to the Metropolitan Council's mission that is reflected in the [2030 Water Resources Management Policy Plan](#): protect the region's ground and surface water resources so that the growing population of the region will continue to have a safe and adequate water supply.

The local water resources management plan typically appears within the public facilities section of the comprehensive plan.

Minnesota law requires all municipalities to develop three chapters that constitute their water resources management plan:

- A wastewater and comprehensive sewer plan that specifies areas to be seweraged by the public system, sets standards of operation for private systems and identifies areas that are not suitable for public or private systems. ([Handbook, page 5-2](#))
- A surface water management plan that protects water quality and addresses water quantity issues. ([Handbook, page 5-12](#))
- A water supply plan that ensures a safe and sufficient water supply now and in the future. ([Handbook, page 5-18](#))

<http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm>

[Minn. Stat. 473.859, Subd. 3\(2\), 3\(4\)](#)

Use Metropolitan Council forecasts

In crafting the local water resources management plan, municipalities must use the Metropolitan Council's forecasts for population, household and employment growth. They must also ensure that the forecasts used in this chapter correspond with those in the comprehensive plan's background and land use plan chapters. The contents of these chapters are described in [Section Two](#) and [Section Three](#) of this handbook.

Requirements listed in the WRMPP

Appendix B-2 of the *Water Resources Management Policy Plan* outlines [specific requirements for each of the three sections of the plan](#).

Minnesota statute requires local governments to submit both a wastewater plan and a comprehensive sewer plan that describe service needs that the Metropolitan Council will be expected to fill.

To simplify the process of preparing this portion of the water resources management chapter, the Metropolitan Council has combined the requirements for the wastewater and comprehensive sewer plans. The municipality's **system statement** specifies which portions of this plan must be included in the comprehensive plan's decennial plan update.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=15

[Minn. Stat. 473.859, Subd. 3\(2\)](#)

[Minn. Stat. 473.513](#)

Sewer plan overview

The Metropolitan Council reviews the local wastewater and comprehensive sewer plan [to ensure conformance with the 2030 Regional Development Framework and the Water Resources Management Policy Plan](#).

The sewer plan must describe, designate and schedule the areas to be sewered by the public system whether that system is regional or local. The sewer plan must also describe the existing and planned capacities of the public system.

Before a local government may proceed with a sewer extension or modification to its local sanitary sewer system, the municipality must have a comprehensive sewer plan showing the extension in service approved by the Metropolitan Council.

Use Metropolitan Council forecasts

The wastewater and sewer plan must be designed to accommodate the population, household and employment forecasts provided in the municipality's *system statement*. Each of these forecasts must be allocated to sewered and unsewered service.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_RegionalFramework.pdf

Sewer flow calculation template:
<http://www.metrocouncil.org/planning/LPH/forms.htm>

Content overview

The wastewater plan of a municipality served by the regional sewer system or by locally owned and operated treatment plants must include the information listed below.

[A detailed list of requirements](#) is included on pages 81 through 83, Appendix B-2a of the *Water Resources Management Policy Plan*. The municipality's system statement includes the specific requirements needed by the Metropolitan Council. Below is a general overview of the required elements:

- **Tables that include population, household number and employment forecasts** for areas served by the public sewer system, capacity and design flows for existing trunk sewers and lift stations, information on the existing and potential connections by local sewer service. ([Handbook, page 2-3](#))
- **Projection of sewer flow volume in five-year increments** through 2030, and other elements described in the [Water Resources Management Policy Plan Appendix B](#). ([Handbook, page 5-5](#))
- Description of **system capacity and planned improvements**. ([Handbook, page 5-5](#))
- **Maps** showing the location of all sewer-related facilities including pipes, lift stations, pumps, meters, treatment plants, waste disposal sites, existing and proposed future connections, private wastewater treatment plants and public wastewater treatment plants. ([Handbook, page 5-6](#))
- The municipality's policies and programs to prevent and reduce excessive **infiltration and inflow**. ([Handbook, page 5-7](#))

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=15

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=17

Project the sewer flow volume

[Include sewer flow volume projections based on the forecasted growth for 2010, 2020 and 2030.](http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=7) For municipalities served by the Metropolitan Disposal System, these projections are provided in Appendix B-1 of the *Water Resources Management Policy Plan*.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=7

Since there is no preferred method for projecting sewer flows, each municipality may use the method that is most appropriate. However, the methodology and assumptions used must be explained in the plan.

Describe system capacity

The description of the system's capacity includes all local, regional and private wastewater systems operating in the municipality and specifies all planned improvements. To meet these requirements, the plan must include:

- **Capacity and design flows** for existing trunk sewers and lift stations.
- **The number of existing and potential connections** for each sewer service district in the municipality.
- **Projected sewer flow volume in five-year increments** through 2030.
- **The maximum projected sewer flow volume** at whatever point the municipality is designated as a fully developed municipality.
- **Proposed timing for the expansion of existing trunk sewer pipes or construction of new trunk sewer pipes** to be connected to the Metropolitan Disposal System or to the locally owned and operated wastewater system.
- Information on the **type and capacity of all municipally or privately owned treatment facilities**, including a copy of the municipality's National Pollutant Discharge Elimination System (NPDES) or State Disposal System (SDS) permits.

Map the system

Maps of the existing and planned sanitary sewer system must show the following:

- **The existing sanitary sewer system** with identification of lift stations and waste disposal sites.
- **The geographic boundaries** of the local sewer service districts.
- Location of **existing or planned connection points** to the Metropolitan Disposal System for each local sewer service district.
- **All inter-community connections.**
- **Proposed changes in the municipality's boundaries,** including areas designated for orderly annexation.
- **Information on onsite sewage disposal systems,** including known non-conforming systems and systems with known problems.

Address Infiltration and Inflow

During major rainfall, infiltration and inflow tax the capacity and operation of the Metropolitan Disposal System. Therefore, [the Water Resources Management Policy Plan includes policies for reducing infiltration and inflow.](http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_WastewaterService.pdf#page=9)

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_WastewaterService.pdf#page=9

Infiltration and Inflow Requirements

[The infiltration and inflow toolbox](http://www.metrocouncil.org/environment/ProjectTeams/I-I-Home.htm) on the Metropolitan Council's website explains exactly what each municipality must do to comply with these requirements. Municipalities need to include at least the following elements:

<http://www.metrocouncil.org/environment/ProjectTeams/I-I-Home.htm>

- Present the **objectives, policies and strategies** for preventing and reducing excessive infiltration and inflow. Sump pumps and drain tile in the local sewer system are among the issues that need to be addressed.
- Discuss the **mechanisms for minimizing inflow and infiltration**. Provide copies of ordinances prohibiting the discharge of foundation drains and roof leaders into the sanitary disposal system and requiring the disconnection of existing foundation drains, sump pumps and roof leaders from the sanitary disposal system.
- Provide information on the **extent, source and significance of existing inflow and infiltration problems** along with an analysis of costs for remediation.
- Present the **implementation plan** for eliminating and preventing excessive infiltration and inflow. Include strategies, priorities, scheduling and financing mechanisms.

Additional information is required from municipalities that use wastewater treatment alternatives other than the regional system. Included in this list are municipalities with systems described by one or more of the following:

- **Septic systems** or individual sewage treatment systems. ([Handbook, page 5-9](#))
- **Community treatment systems** such as package treatment plants and municipal drainfields. ([Handbook, page 5-10](#))
- Locally owned and operated **wastewater treatment plants**. ([Handbook, page 5-11](#))
- **Rural Centers** intending to change their designation to “rural growth center” and to request that the Metropolitan Council acquire and operate the local wastewater treatment plant. ([Handbook, page 5-11](#))

Septic system management

Municipalities with onsite sewage treatment facilities, also known as septic systems or individual sewage treatment systems (ISTS), [must demonstrate that their system conforms to the *Water Resources Management Policy Plan* and Minnesota Pollution Control Agency \(MPCA\) Rule 7080.](#)

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_WastewaterService.pdf#page=19

***ISTS management
program
requirements***

The local wastewater section must include an ISTS management program that:

- Requires **inspections or pumping** of all systems no less frequently than every three years.
- Requires **repair or replacement of failing systems** within five years.
- Requires **replacement of systems that pose an imminent public health or safety threat** within 10 months.
- Includes **current number of systems**.
- Establishes a **tracking and notification database** that includes the year the system was built, the date each ISTS was inspected, the condition of the system, the volume and date the contents were pumped out and whether the system was compliant with 7080 rules.
- Has an **enforcement provision** that allows the municipality to address failing systems or systems found to be imminent public health threats.

[The Metropolitan Council's access database](#) is available for municipalities to use to manage and track the condition of their septic systems.

<http://www.metrocouncil.org/environment/Watershed/watershed/ists.htm>

***Community
treatment systems
plans***

Municipalities that include a public or private treatment system must include the following:

- **A map showing the location of existing public and private treatment systems** that serve more than one home or business. These may include such systems as package treatment plants and group on-site systems.
- **A description of conditions under which the municipalities allow community treatment systems** such as package treatment plants and municipal drainfields. This should include discussion of allowable land uses, installation requirements, management requirements and local government responsibilities.

***Local wastewater
treatment plants
plans***

Municipalities with a locally owned and operated wastewater treatment plant must include the following additional information:

- **Projected wastewater flows** in 2010, 2020 and 2030.
- **Local objectives, policies and strategies** for preventing and reducing excessive infiltration and inflow including a discussion of sump pumps and drain tile in the local sewer system.
- **Proposed timing and financing** of any expanded or new treatment facilities.
- **Copies of facility planning reports** for the upgrading of the treatment plants.

If a municipality is a rural center, it must request and receive approval of a change in its designation to “rural growth center” before requesting that the Metropolitan Council acquire and operate its local wastewater treatment plant. A municipality making such a request needs to address [the criteria outlined in the Water Resources Management Policy Plan \(pages 32-34\)](#):

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_WastewaterService.pdf#page=32

1. As part of the comprehensive planning process, the municipality must utilize the Metropolitan Council’s 2030 growth projections as well as preserve areas for growth post-2030.

- Counties with land-use planning authority must preserve areas surrounding the Rural Growth Centers for future growth.
- Surrounding townships and cities that have land-use planning and zoning authority must preserve areas surrounding the Rural Growth Center for future growth.
- A mechanism must be in place at the time of acquisition that provides for staged orderly growth in the surrounding area.

2. The wastewater treatment plant must be determined to be expandable.

- The existing WWTP site must provide an opportunity for expansion, or there must be an acceptable site available for a new wastewater treatment plant.
- There must be feasible and economical discharge options.

Process overview

The local surface water management plan shows how the municipality protects the quality and quantity of surface water and ground water. [Nonpoint source pollution is a serious issue as it has a direct impact on wastewater treatment costs.](http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_SurfaceWaterManagement.pdf)

The Metropolitan Council considers the municipality's plan to control the cumulative impacts of nonpoint source pollution as critical to the overall local water resources plan. Control of nonpoint source pollution is considered in determining conformance with the Regional Water Resources Management Policy Plan.

Minnesota rules specify the order in which the standards and processes for protecting surface and ground water are drafted and ratified. The Board of Water and Soil Resources, the watershed management organizations, the Metropolitan Council, and the local municipalities all play a part in the process.

The Board of Water and Soil Resources is required to adopt rules that establish minimum standards for local surface water management.

Each Watershed Management Organization (WMO) prepares and formally adopts a watershed management plan based on the rules established by the Board of Water and Soil Resources.

Within two years from the date that the WMO has adopted the watershed plan, each municipality with land located within the watershed must prepare a local surface water management plan that is consistent with all applicable WMO plans.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_SurfaceWaterManagement.pdf

<http://www.revisor.leg.state.mn.us/arule/8410/>

<http://www.revisor.leg.state.mn.us/data/revisor/statutes/2004/103B/201.html>

<http://www.revisor.leg.state.mn.us/data/revisor/statutes/2004/103B/235.html>

All municipalities must submit their local water management plans to the Metropolitan Council for review and comment. The Metropolitan Council's review is intended to ensure that the local plan conforms to Council policy, including policy in the *Water Resources Management Policy Plan*, and is consistent with the Metropolitan Council's policies for reducing nonpoint source pollution.

Within 45 days after receiving the plan, the Metropolitan Council must submit its review comments to the WMO and municipality. The WMO has 60 days to review the plan and approve it. [The local governing unit then adopts the plan and, within 30 days, forwards a copy of the adopted plan to the WMO and Metropolitan Council.](#)

[Minn. Stat. 473.859, Subd. 2](#)

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_RegionalFramework.pdf#page=8

[A list of content and process requirements compiled from a number of Minnesota statutes, Minnesota rules and Metropolitan Council policies](http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=17) is found on pages 83 - 87 in Appendix B-2 of the *Water Resources Management Policy Plan*. The local water management plan must address the following to meet the requirements identified in the *Water Resources Management Policy Plan*:

General requirements

- A section titled “Purpose” that outlines the purposes of the municipality’s water management programs.
- An executive summary that summarizes the content of the water management plan.
- An outline of all the water resource management agreements that have been entered into by the local municipality.
- A land and water resources inventory which includes information required by the WMO plans such as precipitation, geology, topography, surface water resources, groundwater, soil data, pollutant sources, fish and wildlife habitat and water based recreation areas.
- The policies and goals relating to the purpose of the plan and consistent with policies and goals of the WMO (e.g., policies for improving groundwater and surface water quality and quantity, managing wetlands, controlling erosion and protecting recreational areas and wildlife).
- An outline of the municipality’s implementation program.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=17

- A financial impact analysis of regulatory controls and programs. At a minimum, the plan must include the estimated cost of adopting, implementing and enforcing the plan, and it must describe the anticipated sources of revenue.
- An assessment of existing and potential water resource-related problems, including those identified in the WMO plans for the municipality, along with planned solutions for these problems.
- A description of procedures for amending the plan with statement of the year through which the plan is in effect and description of procedures for minor amendments.

Additional information is required for municipalities to meet the requirements identified in the *Water Resources Management Policy Plan*.

Reduce nonpoint source pollution

Municipalities must comply with Metropolitan Council policies by adopting goals and methods to reduce nonpoint source pollution. Doing so requires the municipality to [identify and control such things as runoff from development and construction activities](#).

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_SurfaceWaterManagement.pdf#page=8

Local ordinances

The plan must include ordinances intended to reduce nonpoint source pollution. These may include erosion and sediment control, storm water management, wetland protection, buffers, shoreland or flood plain protection, and critical area management ordinances. [A list of resources on the Metropolitan Council's website provides links to sample ordinances.](#)

<http://www.metrocouncil.org/planning/LPH/resource/links.pdf>

Stormwater management

The municipality must identify ways to reduce stormwater quantity and improve its quality. Information regarding the following actions should be included in the water management chapter:

Thermal pollution strategies***Wetland management plan******Water quality goals and protection***

- [Control runoff rates so that land-altering activities, such as construction or road building projects, do not result in an increase in peak storm water flow.](#)
- Adopt criteria such as those of the [Nationwide Urban Runoff Program \(NURP\) criteria for wet detention basins](#) to protect and improve stormwater runoff quality.
- Promote a stormwater plan that increases infiltration and decreases impervious areas
- Identify and adopt management practices such as those described in the [Metropolitan Council's Urban Small Sites Best Management Practice Manual](#) to reduce storm water runoff.
- Incorporate requirements for presettlement to precede stormwater discharge into lakes and streams.
- Identify and adopt methods for minimizing the effects of temperature, especially in vulnerable environments such as trout streams and fens.
- Adopt a wetland management plan that incorporates a function and value assessment for wetlands consistent with the wetland policies of the WMOs.
- Establish measurable water quality goals for each body of water identified in the municipality's local water management and land use plans. Include information on how surface water protection will also protect groundwater.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=17

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

<http://www.metrocouncil.org/environment/Watershed/BMP/manual.htm>

<p>MPCA requirements</p>	<p>Municipalities that have one or more bodies of water identified in the MPCA's list of impaired waters <u>must provide information relating to their compliance with the MPCA's Total Maximum Daily Load (TMDL) program.</u></p>	<p>http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_SurfaceWaterManagement.pdf#page=6</p>
<p>Nondegradation goals</p>	<p>Municipalities identified in Appendix A-3 of the <i>Water Resources Management Policy Plan</i> must meet the <u>MPCA's National Pollutant Discharge Elimination System (NPDES) requirements for a Municipal Separate Storm Sewer System (MS4) permit.</u></p> <p>The Metropolitan Council policy is that there will be no adverse impact on the quality of water moving through the region. Municipalities must adopt policies to reduce the effects of stormwater runoff so that lakes, rivers, streams and wetlands are not degraded.</p>	<p>http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf</p>
<p>Surface water resources</p>	<p>The Metropolitan Council provides <u>resources related to surface water and watershed planning, including sample ordinances and links to other websites.</u></p> <p>The Metropolitan Council's <i>Urban Small Sites Best Management Practice Manual</i> provides <u>implementation strategies for reducing storm water runoff from smaller construction sites.</u></p> <p>Metropolitan Council reports available online include <u>Annual Water Quality Reports and Watershed Management Reports.</u></p>	<p>http://www.metrocouncil.org/environment/water/planning/index.htm</p> <p>http://www.metrocouncil.org/environment/Watershed/BMP/manual.htm</p> <p>http://www.metrocouncil.org/planning/environment/environment.htm</p> <p>http://www.metrocouncil.org/environment/Watershed/reports/index.htm</p>

**Process for
municipalities >1,000
residents**

Every municipality with a public water supply must complete a water supply plan. Information to be included in this plan is specified by Minnesota statute.

The *Water Resources Management Policy Plan* identifies the sources, level of demand and potential limits of the region's water supply. It then describes [policies and strategies to protect this valuable resource](#).

The Department of Natural Resources (DNR) notifies communities serving more than 1,000 residents regarding the submittal date of their water supply plan. The plan is then submitted to both the DNR and the Metropolitan Council. **If the water supply plan was completed before the full comprehensive plan update, the comprehensive plan update needs to include only a summary of changes made since the water supply plan was submitted to the DNR and Metropolitan Council.**

**Process for
municipalities <1,000
residents**

Municipalities serving fewer than 1,000 residents submit their water supply plans to the Metropolitan Council as a part of the comprehensive plan amendment or update.

[Minn. Stat. 473.859, Subd. 3\(4\)](#)

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_WaterSupply.pdf

<http://www.revisor.leg.state.mn.us/data/revisor/statutes/2004/103G/291.html>

[Minn. Stat. 473.859, Subd. 6](#)

Content Overview

The Metropolitan Council and Minnesota DNR developed common guidelines for all the required sections of the water supply plan. As a result, a single plan may be submitted to meet the requirements of both agencies.

The Metropolitan Council reviews the local water supply plan for consistency with DNR plan requirements as well as *Water Resources Management Policy Plan* requirements.

The Water Resources Management Policy Plan also includes the [14-page form that, when completed, meets all the requirements of the water supply portion of the local water resources management plan](#).

The municipality may either complete this form or use it as a guide to draft text containing all the following information:

- Supply system description and evaluation ([Handbook, page 5-20](#))
- Emergency response procedures ([Handbook, page 5-21](#))
- Conservation plan ([Handbook, page 5-21](#))
- Metropolitan Land Planning Act requirements ([Handbook, page 5-22](#))

<http://www.metrocouncil.org/environment/Water/supply/Emergency-Conservation-Plan-Template.doc>

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=19

Part I: Supply system description and evaluation

Part I of the water supply form requires a description and evaluation of the existing water supply system and current demand. The contents of this section consist of the following:

- Table of historic water demand,
- List of large volume users,
- Description of treatment and storage capacity facilities,
- Identification of groundwater and surface water sources, and
- Table of 10 year demand projections.

- Assessment of resource sustainability including contingency plan that meets the requirement of the [Minnesota Department of Health's Wellhead Protection Plan](http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf).
- Summary of planned capital improvements.

- [A detailed list of requirements for Part I](#) may be found on page 88-93 of the Water Resources Management Policy Plan.

<http://www.metrocouncil.org/planning/LPH/resourcelinks.pdf>

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=22

Part II: Emergency response procedures

Part II of the water supply form requires the preparation of a water emergency plan that contains the following information:

- Contacts for emergency situations,
- Emergency response procedures,
- Current water sources and service areas,
- Procedures for augmenting water supplies such as interconnections with public and private systems that can provide water in an emergency,
- Allocation and priority of water supply for emergencies and periods of gradual water supply decrease,
- Procedures for reducing demand,
- Enforcement of water use restrictions, and
- [A detailed list of requirements for Part II](#) may be found on page 94-97 of the *Water Resources Management Policy Plan*.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=25

Part III: Conservation plan

Part III of the water supply form requires a water conservation plan that contains conservation goals that measure unaccounted for water use, residential per capita demand, total per capita demand, and peak demand.

The conservation plan should also include programs aimed at conserving water or reducing demand. Such programs may include metering and tracking unaccounted water; implementing conservation billing rates, regulations and education programs; and retrofitting or replacing inefficient plumbing.

[A list of requirements for Part III of the water supply form and details related to the DNR approval process](#) may be found on pages 98-103 of the *Water Resources Management Policy Plan*.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=29

Part IV: Metropolitan Land Planning Act requirements

The Metropolitan Land Planning Act identifies three additional elements that must appear in the local water supply plan. These are listed in Part IV of the water supply form. These elements are:

- A list of local policies relating to water supply,
- A discussion of the impact of the water supply plan on the rest of the comprehensive plan, and
- Projections of demand based on the municipality's allocation of the Metropolitan Council's 2010, 2020 and 2030 forecasts for population, households and employment.

[A detailed list of requirements for Part IV and details regarding the Metropolitan Council review process](#) may be found on page 104 of the *Water Resources Management Policy Plan*.

http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPMay2005_Appendices2.pdf#page=35

Water Supply Resources

The Metropolitan Council provides [resources to assist with water supply planning](#) including:

- Tables with projected water demand,
- Information about water conservation,
- Links to statutes and other state agencies online resources, and
- MPCA's regional groundwater model.

<http://www.metrocouncil.org/environment/WaterSupply/index.htm>

Regional Parks Policy Plan

The presence of legislation that protects parks and open space in the Metropolitan area demonstrates that these are deemed essential to the quality of life of our region’s residents.

The definition and value of parks and open space are codified in Minnesota statute. Minnesota statute defines *regional recreation open space* and lists the variety of parks and facilities included.

That value translates into the [requirements specified in the Metropolitan Council’s 2030 Regional Parks Policy Plan](#).

The entire [2030 Regional Parks Policy Plan](#) is available on the Metropolitan Council’s website.

Maps

The Metropolitan Council’s [2030 Regional Parks System Map](#) identifies existing regional parks and trails.

Another map of the 2030 Regional Parks System shows the location of [search areas for new facilities](#).

Resources

[The Metropolitan Council’s Parks staff](#) are available to answer questions about the comprehensive plan requirements or specific park facilities.

[Minn. Stat. 473.147 Subd. 1](#)

[Minn. Stat. 473.302](#)

[Minn. Stat. 473.121 Subd. 14](#)

<http://metro council.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=18>

<http://www.metro council.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf>

<http://www.metro council.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf #page=60>

<http://metro council.org/planning/parks/ParksPlanMap.pdf>

<http://www.metro council.org/planning/assistance/staff.htm>

Municipalities are required to identify, map and plan for regional park, open space, and trails when any portion of these falls within their jurisdiction. The comprehensive plan, in turn, must identify these. The intent of these requirements is to ensure that the region's parks and trails, that often span more than one municipality, are connected and coordinated.

If no portion of a regional park, trail, facility or recreation area falls within the municipality's boundaries, the comprehensive plan must assert this fact.

If a regional facility, or any part of such an area, falls within a municipality's jurisdiction, the comprehensive plan must include the following information.

[See a map of existing and planned parks and trails in the 2030 Regional Parks Policy Plan.](#)

The municipality's *system statement* contains specific information from the *2030 Regional Parks Policy Plan* regarding information about regional parks that must be present in the municipality's comprehensive plan. Each municipality's *system statement* contains a map that illustrates the park and trail boundary or park and trail search area.

It also contains contact information regarding the regional park agency or agencies that manage regional parks and trails within the municipality. Contact the [regional Park Agency staff in your area](#) with specific questions relating to the master plans of park facilities within their jurisdiction.

The boundaries of existing and planned regional parks, park reserves, special recreation features and regional trails must be identified in the comprehensive plan land use map.

[Minn. Stat. 473.859, Subd. 3 \(3\)](#)

<http://www.metrocouncil.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=5>

<http://www.metrocouncil.org/parks/parks.htm>

Your System Statement provides park information

Show boundaries of parks and trails

***If true boundaries
are not available***

Park and trail boundary information is available in approved park and trail master plans. The master plans, and detailed boundary information from them, are available through the regional park implementing agency that owns or manages the park or trail. Each municipality's *system statement* provides contact information for the regional park implementing agency or agencies.

If it is not clear whether a master plan has been prepared for a regional park or trail, [contact the regional park implementing agency for up-to-date information](#) on the likely location of the park or trail and its status relative to master planning.

If no master plan has been prepared, the municipality's *system statement* will identify the search area instead of specific boundaries. The comprehensive plan's land use map must then illustrate the likely location of the regional park or trail. The search area must appear in the comprehensive plan, along with acknowledgement that the search area has been proposed for a park, or the general corridor has been proposed for a trail.

[The Regional Parks Policy Plan identifies all search areas in the region, and includes a list of maps.](#)

<http://metro council.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=24>

<http://metro council.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=76>

Most components of the comprehensive plan indicate *what* the municipality intends to do. This section tells *how* the municipality intends to do it. Here the municipality describes the official controls and public programs that ensure implementation of the comprehensive plan and protection of public infrastructure.

Minnesota statute outlines three areas the implementation program chapter of the comprehensive plan must include:

- official controls
(Handbook, page 7-1)
- a capital improvement program
([Handbook, page 7-3](#))
- a housing implementation program
([Handbook, page 3-8](#))

Each of these is further addressed by Metropolitan Council policies.

The implementation component of the comprehensive plan must include:

- a description of all relevant ordinances, public programs and fiscal devices that ensure protection of the infrastructure and implementation of the comprehensive plan, and
- a current zoning map and a description of zoning districts that include allowable densities/intensity of use, and lot sizes.

[Minn. Stat. 473.859, Subd. 4](#)

Which official controls are relevant?

Official controls include ordinances, fiscal devices and other actions the municipality uses to implement the comprehensive plan. Official controls may include zoning and subdivision ordinances, mixed use development ordinances, natural resource conservation ordinances, and the like.

Official controls are required to guide zoning, subdivision, water supply and private sewer systems. To be consistent with the *2030 Regional Development Framework*, the municipality should adopt official controls to:

- accommodate levels of growth consistent with *2030 Regional Development Framework* forecasts,
- provide land use and transportation connections,
- protect natural resources, and
- implement the comprehensive plan.

[Minn. Stat. 473.865](#)

Resources for official controls

[Local Planning Assistance staff](#) can provide sample ordinances developed by the Council or other state agencies, as well as examples of ordinances from other metropolitan area municipalities.

<http://www.metrocouncil.org/planning/assistance/staff.htm>

The Handbook's Section 5, Water Resources Management, contains [resources for managing the municipality's water supply, surface water and wastewater](#).

<http://www.metrocouncil.org/planning/LPH/LPHSect5.pdf>

The Metropolitan Council's Natural Resources Task Force has prepared a list of [strategies intended to help municipalities identify and protect their significant natural resources](#). Municipalities may use these in updating their comprehensive plans and drafting ordinances.

<http://www.metrocouncil.org/planning/landuse/NRProtectionStrategy.pdf#page=16>

The Local Government Environmental Assistance Network provides [an extensive Web site on protecting the environment and public health](#).

<http://www.lgean.org/html/toolbox.cfm>

CIP relates to land use and infrastructure***CIP requirements***

Comprehensive plans are required to include a capital improvement program (CIP) for four areas:

- transportation,
- wastewater,
- water supply, and
- parks and open space facilities.

The CIP shows how the municipality will support and implement the timing and financing of public improvements necessary for the municipality's planned growth.

In the CIP component, the municipality specifies the timing and sequence of major local public facilities that will ensure development of the municipality occurs in accordance with the plan.

To meet statutory requirements, the comprehensive plan must include the municipality's five-year CIP. That CIP, in turn, must include budgets and expenditure schedules for transportation, sewers, water supply, and parks and open space facilities.

The Metropolitan Council reviews the five-year CIP to determine that it implements the comprehensive plan and coordinates the planned projects with the development financing schedule.

[Minn. Stat. 473.859 Subd. 4\(2\)](#)

[Minn. Stat. 473.852 Subd. 4](#)

With each comprehensive plan amendment or update, including the decennial review in 2008, the municipality needs to review its official controls. This review must establish that official controls

- are consistent with the *2030 Regional Development Framework*,
- conform to the metropolitan system plans, and
- are congruent with all other elements of the comprehensive plan.

Municipalities have nine months after updating or amending their comprehensive plan to update the corresponding official controls. If a revision is required to bring the local controls into alignment with the comprehensive plan, the municipality must submit one of the following:

- a copy of the original official control and a copy of the revision which has been approved by the local unit of government, or
- a copy of the original control with changes approved by the local unit of government marked.

Municipalities may not adopt any new official controls that conflict with the comprehensive plan, and they may not permit activity that conflicts with the metropolitan system *Policy Plans*.

[Minn. Stat. 473.865, Subd. 3](#)

The Council's [Sector Representatives](#) are the first point of contact for questions about developing and amending local comprehensive plans. Additional support is available from Council staff with specific expertise, as listed below under appropriate sections of the [Local Planning Handbook](#).

Reviews Coordinator	Cheryl Olsen, Reviews Coordinator	cheryl.olsen@metc.state.mn.us	651-602-1616
Research Staff	http://www.metrocouncil.org/metroarea/keycontacts.htm		
Employment Forecasts	Regan Carlson, Senior Research	regan.carlson@metc.state.mn.us	651-602-1407
Household and Population Forecasts	Todd Graham, Principal Forecaster	todd.graham@metc.state.mn.us	651-602-1331
Demographic Changes and Trends	Todd Graham, Principal Forecaster	todd.graham@metc.state.mn.us	651-602-1332
Economic Data	Debra Detrick, Research Analyst	debra.detrick@metc.state.mn.us	651-602-1327
Annexations	Jim Uttley, Planning Analyst	jim.uttley@metc.state.mn.us	651-602-1361
Sector Representatives	http://www.metrocouncil.org/planning/assistance/sectorreps.htm		
Land Use/Urban Service Expansions	Phyllis Hanson, Manager	phyllis.hanson@metc.state.mn.us	651-602-1566
Geographic Information System	Mark Kotz, System Admin.	mark.kotz@metc.state.mn.us	651-602-1644
MetroGIS	Randall Johnson, Coordinator	randy.johnson@metc.state.mn.us	651-602-1638
Housing	Linda Milashius, Senior Planner	linda.milashius@metc.state.mn.us	651-602-1541
Livable Communities	Paul Burns, Manager	paul.burns@metc.state.mn.us	651-602-1106
Aggregate Resources	Marcel Jouseau, Manager	marcel.jouseau@metc.state.mn.us	651-602-1145
Critical Area/MNRRRA	Tori Dupre, Senior Planner	victoria.dupre@metc.state.mn.us	651-602-1621

Transportation Planning Staff
Highway planning
Traffic Forecasts
Traffic Analysis Zones
Right of Way Acquisition
Roadway Classification
Transit
Park and Rides
Aviation
<http://www.metrocouncil.org/services/roster.htm>

Connie Kozlak, Manager	connie.kozlak@metc.state.mn.us	651-602-1720
Mark Filipi, Forecast Analyst	mark.filipi@metc.state.mn.us	651-602-1725
Bob Paddock, Planner	bob.paddock@metc.state.mn.us	651-602-1340
Ann Braden, Senior Planner	ann.braden@metc.state.mn.us	651-602-1705
Dave Vessel, Senior Planner	dave.vessel@metc.state.mn.us	651-602-1646
Steven Mahowald, Transit Planner	steven.mahowald@metc.state.mn.us	612-349-7797
Elaine Koutsoukos, Senior Planner	elaine.koutsoukos@metc.state.mn.us	651-602-1717
Craig Lamothe, Manager	craig.lamothe@metc.state.mn.us	612-349-7793
Elaine Koutsoukos, Senior Planner	elaine.koutsoukos@metc.state.mn.us	651-602-1717
Chauncey Case, Senior Planner	chauncey.case@metc.state.mn.us	651-602-1724

Environmental Services Staff
Sewer Plans
Septic Systems
Surface Water
Water Supply
<http://www.metrocouncil.org/environment/contactUs/>

Kyle Colvin, Assistant Manager	kyle.colvin@metc.state.mn.us	651-602-1151
Jim Larsen, Senior Planner	jim.larsen@metc.state.mn.us	651-602-1159
Jack Frost, Planning Analyst	jack.frost@metc.state.mn.us	651-602-1078
Judy Sventek, Planning Analyst	judy.sventek@metc.state.mn.us	651-602-1156
Sara Bertelsen, Enviro. Planner	sara.bertelsen@metc.state.mn.us	651-602-1035

Jan Youngquist

jan.youngquist@metc.state.mn.us

651-602-1029

Natural Resources

Ann Beckman, Manager

ann.beckman@metc.state.mn.us

651-602-1669

Low Impact Development

Karen Jensen, Planner

karen.jensen@metc.state.mn.us

651-602-1401

Metropolitan Significance

Jim Uttley, Planning Analyst

jim.uttley@metc.state.mn.us

651-602-1632

The resources below are provided to assist municipalities in developing and amending their local comprehensive plans. The listings reflect the organization/sections of the [Local Planning Handbook](#).

Regional Policy Plans	2030 Regional Development Framework	http://www.metrocouncil.org/planning/framework/documents.htm
	Transportation Policy Plan	http://www.metrocouncil.org/planning/transportation/TPP/2004/summary.htm
	Water Resources Management Policy Plan	http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm
	Parks Policy Plan	http://www.metrocouncil.org/planning/parks/2005/ParksPlan.htm
Contact information	General Contact Information	http://www.metrocouncil.org/contact/contact.htm
	Council Members	http://www.metrocouncil.org/about/members.htm
	Sector Representatives	http://www.metrocouncil.org/planning/assistance/sectorreps.htm
Statutes	Planning and Technical Staff	http://www.metrocouncil.org/planning/assistance/staff.htm
	Metropolitan Land Planning Act	http://www.metrocouncil.org/about/statutes.pdf
Glossary	Minnesota Office of Revisor of Statutes	http://www.leg.state.mn.us/leg/statutes.asp
	Glossary of frequently used terms	http://www.metrocouncil.org/resources/glossary.pdf
Templates and Forms	Forms and tables related to comprehensive planning	http://www.metrocouncil.org/planning/LPH/forms.htm
Planning Consultants	Minnesota Department of Administration	http://server.admin.state.mn.us/resource.html?Id=1916

Planning Areas

2030 Regional Development Framework -
Planning Area Map

<http://www.metrocouncil.org/planning/framework/FWPlanningAreas8x11.pdf>

Forecasts

2030 Regional Development Framework –
Strategies for Planning Areas

<http://www.metrocouncil.org/planning/framework/Framework.pdf#page=20>

2030 Regional Development Framework –
Forecasts

<http://www.metrocouncil.org/planning/framework/documents.htm#forecasts>

Water Resources Management Policy Plan –
Sewered Forecasts

<http://www.metrocouncil.org/planning/environment/WRMPP/WRMPPforecasts.pdf>

Demographic Data

Demographic data

<http://www.metrocouncil.org/metroarea/stats.htm>

2000 Census data

<http://www.metrocouncil.org/Census/census2000.htm>

Mapping Resources	GIS resources	http://gis.metc.state.mn.us/
	MetroGIS Datafinder	http://www.datafinder.org/catalog.asp
Housing	Metro Housing and Redevelopment Authority (HRA)	http://www.metrocouncil.org/housing/housing.htm
	Livable Communities Act Fund	http://www.metrocouncil.org/services/livcomm.htm
	Family Housing Fund – Reports	http://www.fhfund.org/educational_materials_reports.asp
	U.S. Department of Housing and Urban Development (HUD)	http://www.hud.gov/
	Minnesota Housing Finance Agency - Reports	http://www.mhfa.state.mn.us/about/about_reports.htm
	Office of the Legislative Auditor - Affordable Housing	http://www.auditor.leg.state.mn.us/ped/2001/pe0103.htm
Solar energy	Minnesota Department of Commerce – Energy Information	http://www.state.mn.us/cgi-bin/portal/mn/jsp/content.do?subchannel=-536881511&id=-536881350&agency=Commerce
	Minnesota Office of Environmental Assistance - Energy Resources	http://www.moea.state.mn.us/energy/index.cfm
Aggregate	Aggregate and Agricultural Resources Map (JPEG file)	http://www.metrocouncil.org/planning/framework/AgriAgg.jpg
	Minnesota DNR - Minnesota Geological Aggregate Resources Inventory of the Seven-County Metropolitan Area, Information Circular No. 46 (IC-46).	http://www.dnr.state.mn.us/lands_minerals/metroaggregate.html
Historic Preservation Critical Area	Minnesota State Historic Preservation Office (SHPO)	http://www.mnhs.org/preserve/shpo/index.html
	Department of Natural Resources – Critical Area Map	http://www.dnr.state.mn.us/waters/watermgmt_section/critical_area/map.html

Regional Policy Plan

Transportation - Policy Plan

Streets and Highway

Minnesota Department of Transportation - Access Management Program

Minnesota Department of Transportation - Traffic Volume Maps

Bicycle Facilities

Bike Map

Transit

Regional Park and Ride Facility Plan

Transit System Map

Transit 2020 Master Plan

Aviation

1996 Aviation Policy Plan

Builders Guide – Mitigating Aircraft Noise in New Residential Construction (March 2006)

Land Use Compatibility Guidelines for Aircraft Noise (2030 TPP, Appendix H)

Helicopter Ordinances Publication No. 559-90-089

Federal Aviation Agency Form 7460

Minnesota Department of Transportation - Aeronautics and Aviation

Long Term Comprehensive Plan (LTCP) or Master Plan for each airport

<http://www.metrocouncil.org/planning/transportation/TPP/2004/summary.htm>

<http://www.oim.dot.state.mn.us/access/>

<http://www.dot.state.mn.us/tda/maps/trafficvol.html>

<http://www.metrocouncil.org/planning/transportation/bikemap/maps.htm>

<http://www.metrocouncil.org/parkridefacilitysitelocation/plan.htm>

http://www.metrocouncil.org/planning/transportation/TPP/2004/TPPtransitsystemway_map.pdf

<http://www.metrocouncil.org/planning/transportation/regtransit.htm>

Paper Copies available from the Data Center

<http://www.metrocouncil.org/planning/transportation/BuildersGuide.pdf>

<http://www.metrocouncil.org/planning/transportation/TPP/2004/TPPAppendixH.pdf>

Paper Copies available from the Data Center

<http://forms.faa.gov/forms/faa7460-1.pdf>

<http://www.dot.state.mn.us/aero/>

Paper copies available for review at the Data Center

Regional Policy Plan	Water Resources Management - Policy Plan	http://www.metrocouncil.org/planning/environment/WRMPP/WRMPP2005.htm
	Wastewater	Infiltration and Inflow Task Force
Surface Water	Minnesota Pollution Control Agency – Individual Sewage Treatment Systems Program	http://www.pca.state.mn.us/programs/ists/index.html
	Watershed management planning	http://www.metrocouncil.org/environment/water/planning/index.htm
	Nonpoint Source Pollution and Urban Small Sites Best Management Practices Manual	http://www.metrocouncil.org/environment/water/BMP/index.htm
	Minnesota Stormwater Manual	http://www.pca.state.mn.us/water/stormwater/stormwater-manual.html
	Watershed management reports	http://www.metrocouncil.org/environment/Watershed/reports/index.htm
	Environment reports	http://www.metrocouncil.org/planning/environment/environment.htm
	Board of Water and Soils – Resources	http://www.bwsr.state.mn.us/watermgmt/complocalwatermgmt/index.html
	Minnesota Pollution Control Agency (PCA)– TMDL	http://www.pca.state.mn.us/water/tmdl/index.html#tmdl
	Minnesota PCA – NPDES	http://www.pca.state.mn.us/programs/inpdes_p.html
	Minnesota PCA – Stormwater Program	http://www.pca.state.mn.us/water/stormwater/index.html
	Minnesota PCA – Best Management Practices Manual	http://www.pca.state.mn.us/water/pubs/sw-bmpmanual.html
	Minnesota PCA – Model ordinances	http://www.pca.state.mn.us/publications/wq-strm2-06.doc
	Minnesota Planning - Model ordinances	http://www.mnplan.state.mn.us/pdf/2000/eqb/ModelOrdW hole.pdf
	Northland NEMO (Nonpoint Education for Municipal Officials)	http://www.mnerosion.org/nemo.html

Water Supply

Water supply planning including a link to the Water Supply Plan Template
Minnesota DNR - Water supply planning resources, incl. Water Supply Template
Department of Health - Wellhead protection

<http://www.metrocouncil.org/environment/watersupply/index.htm>

http://www.dnr.state.mn.us/waters/watermgmt_section/appropriations/eandc_plan.html

<http://www.health.state.mn.us/divs/eh/water/swp/whp/>

Regional Policy Plan

2030 Regional Policy Plan

Regional Parks System Map

Classification system for local and regional facilities

Link to park agencies

Regional Park Agencies contact information

Trust for Public Land - Economic Benefits of Parks

<http://www.metrocouncil.org/planning/parks/2005/ParksPlan.htm>

<http://metrocouncil.org/planning/parks/2005/ParksPlanMap.png>

<http://www.metrocouncil.org/planning/parks/2005/2030RegionalParksPolicyPlan.pdf#page=55>

<http://www.metrocouncil.org/parks/parks.htm>

www.tpl.org/tier2_rp2.cfm?folder_id=727

Natural Resources Protection

Natural Resources Task Force - Report and Recommendations
Conservation Design Models

U.S. Department of Agriculture Forestry Service
U.S Environmental Protection Agency - Native landscaping
Minnesota DNR - Shoreland management

Minnesota DNR – Metro Greenways
Minnesota DNR – Reports and case studies

Minnesota DNR – GIS data
Minnesota DNR – Habitat preservation

Minnesota Planning – Sustainable Development Initiative
Minnesota Pollution Control Agency – Brownfields
Local Government Environmental Assistance Network

Financial Assistance

Minnesota Dept of Administration
Minnesota Council of Foundations Grant Resources
Minnesota Department of Employment and Economic
Minnesota DNR
Minnesota Office of Environmental Assistance
Minnesota Pollution Control Agency

<http://www.metrocouncil.org/planning/landuse/NRProtectionStrategy.pdf>

<http://www.metrocouncil.org/planning/assistance/NaturalResourcesSystems.pdf>

<http://www.na.fs.fed.us/spfo/pubs/uf/techguide/toc.htm>

<http://www.epa.gov/greenacres/index.html>

http://www.dnr.state.mn.us/waters/watermgmt_section/shoreland/index.html

<http://www.dnr.state.mn.us/greenways/index.html>

http://www.dnr.state.mn.us/ecological_services/pubs.html

<http://deli.dnr.state.mn.us/>

http://www.dnr.state.mn.us/neighborhood_wilds/index.html

www.eqb.state.mn.us/SDI/index.html

[Http://www.pca.state.mn.us/cleanup/brownfields.html](http://www.pca.state.mn.us/cleanup/brownfields.html)

<http://www.lgean.org/html/toolbox.cfm>

www.lpa.state.Mn.us/links/grants.html

www.mcf.org/mcf/grant/resource.htm

www.deed.state.Mn.us/Community/assistance/financial.htm

www.dnr.state.Mn.us/grants/index.html

www.moea.state.Mn.us/grants/index.cfm

www.pca.state.Mn.us/programs/index.html

Regular Planning Commission

Item #: 6.4.

Date: 04/07/2011

By: JoAnn Shaw
Community Development

Information

Title:

Staff Update

Background:

Staff update will be presented at the meeting.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Form Review

Inbox

Tim Gladhill

Aaron Backman

Form Started By: JoAnn Shaw

Final Approval Date: 03/31/2011

Reviewed By

Tim Gladhill

Aaron Backman

Date

03/31/2011 11:45 AM

03/31/2011 04:11 PM

Started On: 03/31/2011 11:37 AM

Regular Planning Commission

Item #: 6.5.

Date: 04/07/2011

By: Tim Gladhill
Community Development

Information

Title:

Upcoming Training Opportunities

Background:

In an effort to keep the Planning Commission informed of valuable training opportunities, Staff will make an attempt at regular updates for training opportunities that may be useful to the Planning Commission.

Notification:

Observations:

GTS Land Use Planning Workshops

Multiple Programs

March 9-May 15

www.mngts.org

National Business Institute

Land Use Law: Current Issues in Subdivision, Annexation, and Zoning

May 10

www.nbi-sems.com

League of Minnesota Cities

LU501: Land Use Basics: Grasping the Ground Rules

Web-based

www.lmc.org/page/1/landuse.jsp

American Planning Association (APA) Minnesota Chapter Conference

September 28-30

St. Cloud, MN

www.plannersconference.com

Funding Source:

Staff Recommendation:

Committee Action:

None required.

Form Review

Inbox	Reviewed By	Date
Tim Gladhill (Originator)	Tim Gladhill	03/29/2011 08:44 AM
Aaron Backman	Aaron Backman	03/29/2011 10:10 AM
Form Started By: Tim Gladhill		Started On: 03/16/2011 03:30 PM
Final Approval Date: 03/29/2011		

Regular Planning Commission

Item #: 6.6.

Date: 04/07/2011

By: Tim Gladhill
Community Development

Information

Title:

Planning Minnesota-Official Newsletter of the American Planning Association, Minnesota Chapter

Background:

Attached is the March American Planning Association-Minnesota Chapter Newsletter.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

March Newsletter

Form Review

Inbox

Tim Gladhill (Originator)
Aaron Backman
Form Started By: Tim Gladhill
Final Approval Date: 03/29/2011

Reviewed By

Tim Gladhill
Aaron Backman

Date

03/29/2011 08:44 AM
03/29/2011 09:09 AM
Started On: 03/18/2011 04:15 PM



planning minnesota

Vol. 30 No. 2
March, 2011



The Benefits of the Collaborative Process of Compromise: A Case Study from Alexandria, MN

Guest Writers

Jack Forslund, PTP – WSB & Associates, Inc.

Reuben Collins, EIT – WSB & Associates, Inc.

Karin Tank – City of Alexandria



The City of Alexandria is a beautiful city of approximately 13,000 in west-central Minnesota. Alexandria offers its residents and visitors numerous lakes, parks and trails for recreation, a strong economy and a vibrant downtown filled with numerous commercial establishments. Immediately north of downtown is the Central Lakes State Trail, which is a 55 mile asphalt trail linking three counties and numerous communities. It is used by cyclists and pedestrian for both recreational and utilitarian purposes by local residents, as well as being a significant tourism amenity drawing users from across the State of Minnesota.

Separating the trail from the downtown area is 3rd Avenue (TH 27/29), which is a 5-lane state highway approximately 60 feet wide and averaging nearly 17,000 vehicles per day. While Minnesota law requires all vehicles on a roadway to yield the right-of-way to pedestrians at un-signalized intersections, drivers often fail to properly yield. Recognizing that this situation could be improved, Douglas County along with the City of Alexandria, through a partnership between Douglas County Safe Communities and Active Living Douglas County, applied for and received a grant supported by Blue Cross and Blue Shield of Minnesota to conduct a study to identify potential infrastructure improvements.

This study evaluated a seven-block east-west segment of 3rd Avenue with signalized intersections on either end. While these signalized intersections were equipped with pedestrian actuated walk signals, these intersections (Broadway and Nokomis, respectively) were also complicated by the presence of high traffic volumes – particularly by the number of turning vehicles.

Working with a Steering Committee consisting of representatives from area agencies and businesses, the first step was to identify a “catalogue” of potential pedestrian and bicycle infrastructure enhancements that may have application throughout the area. Also, a more focused analysis was conducted to identify a preferred strategy to improve the crossing of 3rd Avenue by pedestrians and bicyclists, particularly at a location between the signalized intersections of 3rd Avenue at Broadway and Nokomis Street.

The intersection of Jefferson Street with 3rd Avenue was identified as a key location where additional pedestrian enhancements would be particularly helpful. The intersection is located roughly halfway between Broadway and Nokomis Street, and Jefferson Street has been identified by the City of Alexandria as a bicycle route through the City connecting the high school, Alexandria Technical College, and major employers.

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planning minnesota

published by:

The Minnesota chapter of the American Planning Association (APA MN) publishes this newsletter on a monthly basis, with combined June/July and December/January issues.

submissions:

We welcome articles, letters to the editor, photos, calendar items, project profiles, planners on the move items, and other news. Send all submissions via e-mail to:

newsletter@mnapa.com

deadlines:

All submissions should be sent to the editors by March 15, 2011 for inclusion in the April issue.

newsletter editors:

Bob & Kate Garwood
Phone: 763-862-4230
newsletter@mnapa.com

changes of address:

APA MN does not maintain address lists. All lists are maintained at the national office and mailed to local chapters each month. If you have moved, send your updated info to:
Membership Department
American Planning Association
205 N. Michigan Ave., Ste. 1200
Chicago, IL 60601

APA MN administration:

The Chapter web site is
www.mnapa.com

Otto and Peggy Schmid are the Chapter administrators. They can be reached at:

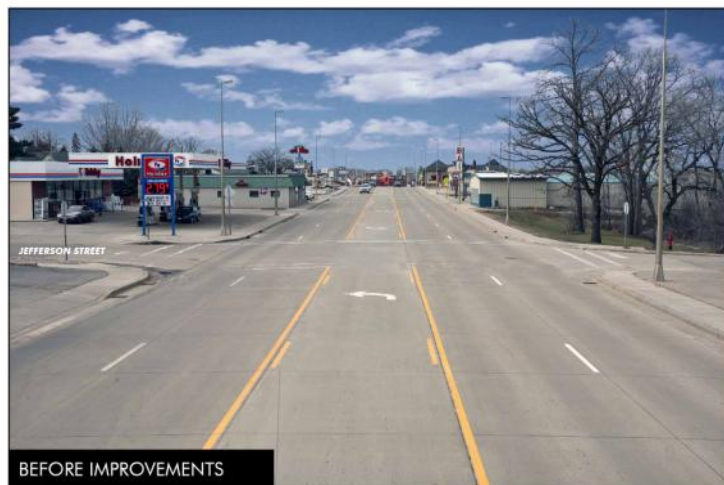
mnapa@buffleheadweb.net
9288 Beverly Drive,
Breezy Point, MN 56472.
Phone 888-882-5369

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Three alternatives were developed to present a range of options surrounding a central theme, which generally consisted of a median or pedestrian island, an enhanced crosswalk, and one of two types of pedestrian actuated signals. It was determined that the most significant barrier facing pedestrians and cyclists in the area was the overall width of 3rd Avenue and the lack of gaps in the traffic stream appropriate to cross the entire street at once.

The alternative preferred by the City and County included the construction of a pedestrian refuge island within the center-turn lane on the western approach of the 3rd Avenue and Jefferson Street intersection. The alternative also prohibited vehicles from making an eastbound left-turn movement to avoid queues from forming in the eastbound through lanes and to improve intersection safety. A more visible crosswalk would also be painted, and a pedestrian actuated signal would be installed (either a High-Intensity Activated crosswalk [HAWK] signal or Rectangular Rapid Flash Beacons [RRFBs]). Shown below is a rendering of how the initial improvement measure would look upon implementation.

- continued on next page -



The project is an example of how project stakeholders initially approach a problem with differing objectives, but through a process of compromise and collaboration a preferred alternative can be agreed upon. This process of collaboration can build positive working relationships that can influence future projects.

The project resulted in collaboration between the City, County and Mn/DOT to add a pedestrian refuge island to a Trunk Highway. Initially, the County hired WSB to prepare several alternatives that could be used to help pedestrians cross 3rd Avenue. However, since 3rd Avenue is a state highway, the City and County had to work closely with Mn/DOT to gain approval.

As discussions began, Mn/DOT expressed some concerns about some of the strategies the City and County wanted to use. In the end, all parties were able to come to an agreement about how to enhance the pedestrian crossing. Shortly thereafter, the City began a streetscape project on nearby Broadway, which is also a state highway. Based on the positive working relationship developed through the 3rd Avenue project, the City, the County and Mn/DOT were able to work more effectively and efficiently on the Broadway Streetscape project.

As a result of the success of the collaborative process, the City has received 2014 Enhancement Funds from Mn/DOT District 4 for the project.

A presentation on the project entitled, *The Benefits of the Collaborative Process of Promise: A Case Study from Alexandria, MN*, will be highlighted in the upcoming program of the **22nd Annual Transportation Research Conference**, with the theme, **The Benefits and Challenges of Building Successful Public-Private Partnerships**. The conference, sponsored by the Center for Transportation Studies at the University of Minnesota, will be held May 24th and 25th at the Crowne Plaza St. Paul Riverfront Hotel, 11 East Kellogg Boulevard, St. Paul. The conference offers CM credits for AICP planners.



Introducing APA-MN Vice President, Trisha Rosenfeld, AICP

In the last newsletter, the Board announced that it was seeking a new Vice President due to the resignation of Mike Darrow. Since that time, the Board has reviewed all the candidate submissions and made an appointment of Trisha Rosenfeld to fill the position.



Trisha Rosenfeld has been the Community Development Director with the City of Belle Plaine for nearly four years. Prior to working for the City of Belle Plaine, she was employed by Greater Mankato Growth to assist with the coordination of the regional planning effort, *Envision 2020*. Rosenfeld has her Master's degree from the Urban and Regional Studies Institute at Minnesota State University-Mankato, with a focus in Management and Planning. Her undergraduate degree is in Marketing and Speech Communications. Prior to her career in community development, Rosenfeld worked in marketing for the private sector. She currently serves on the education and legislative committees for EDAM.

A message from Trisha. . . .

"My past involvement with APA Minnesota includes the 2009 Co-Chair for the Annual Planning Conference. Until December, 2010, I was the APA Minnesota Webmaven for approximately two years.

I look forward to serving as the Vice President of the APA Minnesota organization to continue my involvement with the organization. With both of my previous roles with the organization having concluded, it is important to me to be integral in the planning issues that affect the planners of Minnesota. Having previously been involved directly with the organization's website, my experience will lend itself well to the roles of this position. I am also committed to aiding the decisions that affect Minnesota planners, while helping to obtain the necessary legalities in order to perform our job as planners with the appropriate tools."

Announcing the 2011 APA Minnesota Chapter Conference in St. Cloud September 28th to 30th



The 2011 Conference Committee is excited to announce preliminary details of the 2011 Conference in St. Cloud: *Riding the Waves of Change*.

Please mark your calendars for September 28-30 at the St. Cloud River's Edge Convention Center (formerly the St. Cloud Civic Center) and the Kelly Inn. The conference will provide you with the tools and confidence of being a practitioner in today's environment with increased productivity.

More details, including registration information, will be coming in the following months. However, an RFP for Sessions is now available on the conference website, located at www.plannersconference.com and the APA Minnesota website at www.mnapa.com. If you have any questions or ideas for the conference, please feel free to contact Committee Co-Chairs LaTisha Birkeland and Tim Gladhill.

Don't be afraid to think outside the box for session proposals. The Conference Committee is looking for a well-rounded, multi-disciplinary approach to this year's conference. Ideas proposed for this year include GIS workshops, civil engineering principles, financial planning, demographics and census data and communication skills.



2011 Conference Committee

The conference will provide the maximum CM credits possible, especially important for those with AICP certification.

See you in St. Cloud!

Tim Gladhill
Associate Planner
City of Ramsey
tgladhill@ci.ramsey.mn.us
763-576-4308

LaTisha Birkeland
Assistant Planner
City of Waconia
lbirkeland@waconia.org
952-442-3110



Statewide Health Improvement Program

by Patrick C. Hollister

Since February of 2010, I have been working for Clay County Public Health in West Central Minnesota as the Statewide Health Improvement Program Active Living Planner. The Statewide Health Improvement Program (SHIP), an integral part of Minnesota's nation-leading 2008 health reform law, strives to help Minnesotans lead longer, healthier lives by preventing the chronic disease risk factors of tobacco use and exposure, poor nutrition and physical inactivity. SHIP seeks to create sustainable, systemic changes in schools, work-sites, communities and health care organizations that make it easier for Minnesotans to incorporate healthy behaviors into their daily lives. For more information, visit:

<http://www.health.state.mn.us/healthreform/ship>.

In West Central Minnesota, the Public Health Departments of four counties (Becker, Clay, Otter Tail, and Wilkin) jointly applied for a SHIP grant and received the grant. The four counties decided to choose one city in each county to focus our efforts. The four cities are Detroit Lakes, Dilworth, Perham, and Breckenridge.

As the Active Living Planner, my job is to help our four cities implement policies and practices that create active communities by increasing opportunities for non-motorized transportation (walking and biking) and access to community recreation facilities. My job has focused on working with city leaders in a systematic approach to help leaders understand the link between community design and one's ability to be physically active. The goal is policies that lead to improved community design and "complete streets."

Specifically, here are some of the things that I've been working on:

- **Active Living Community Survey.** SHIP Staff, in coordination with the North Dakota State Data Center, designed a survey to distribute to our four Pilot Sites of Dilworth,



Detroit lakes, Perham, and Breckenridge. The majority of the questions on the survey were identical in each of the four cities, but each City was also given the opportunity to add questions specific to their City. The preliminary results of the surveys can be seen at the following link:

<http://www.ndsu.nodak.edu/sdc/presentations.html>.

Complete results will be available in early 2011. SHIP Staff has already begun using the information that we received from the survey returns to impress upon City leaders the importance of infrastructure improvements to facilitate more biking and walking and Active Living for their residents. We will continue to use this data to educate the public in each of our four cities, as well. Plans are being made to share the local results through community input meetings in early 2011.

- **Highway 75 in Breckenridge.** Mn/DOT is scheduled to resurface Highway 75 through Breckenridge in 2013. At SHIP's urging, Breckenridge, Wilkin County, and Mn/DOT District 4 are now meeting about the possibilities of accommodating cyclists and pedestrians as part of the new Highway 75. SHIP Staff was inspired to push for this because of the recent public input process in Alexandria regarding bike and pedestrian accommodation along Broadway Avenue.

SHIP encouraged community leaders in Breckenridge to take the same approach with the upcoming Highway 75 resurfacing project, and SHIP's efforts are now impacting the process.

- Safe Routes to School.** SHIP Staff held a series of meetings with all four cities to reveal the results of our school surveys of fifth graders (or sixth graders in the case of Breckenridge) and to motivate them to apply for Safe Routes to School grants in 2011. (The results of the school student surveys are available at <http://www.ndsu.edu/sdc/publications/research.htm>) All four cities and all four school districts said that they were interested in applying for a Safe Routes to School grant in 2011. Three of our cities attended the Safe Routes to School training in Alexandria on February 9, jointly hosted by Blue Cross Blue Shield and the Minnesota Department of Health.
- Sidewalk Policy.** The Breckenridge City Council adopted a revised sidewalk ordinance on August 2nd. (Ordinance #478) The adoption of this ordinance has two impacts. First, the new sidewalk ordinance requires that sidewalks along streets and avenues shall be constructed at the time of any street construction/reconstruction unless the Council grants an exemption due to special considerations. Second, the City will enforce the prohibition on destruction of sidewalks by adjacent property owners. The Council always had the power to enforce this, but now they are committed to doing so and revised their sidewalk ordinance to make the requirements for adjacent homeowners to maintain (and if necessary reconstruct) sidewalks even more explicit.
- Mini-Grants.** All four cities have received "mini-grants" from SHIP, each to further the cause of Active Living. Breckenridge is using their mini-grant for a variety of purposes, including handicapped bikes, geocaching, bike racks and the promotion of

use of the City's walking trails. Perham is using their mini-grant funding to revive the Cal Miller Bike route through town, which was first designated over a decade ago but has largely faded from memory. Detroit Lakes is using their mini-grant money to provide more bike racks and bike and walking trail design. Dilworth is using their mini-grant for winter recreational equipment and promotion of their city parks and recreational facilities. We anticipate many policies to be developed in the coming months that would support the sustainability of these system and environmental changes.

Check out our Facebook page ("Statewide Health Improvement Program") and our YouTube channel ("BCOWSHIP"). If you have any questions about any of the above or want to learn more, feel free to contact me at either 218-329-1809 or patrick.hollister@co.clay.mn.us.

Patrick C. Hollister
SHIP Active Living Planner
Becker, Clay, Otter Tail, and
Wilkin Counties



William C. Weber, AICP, PTP
952.451.4818
bill@weberplanning.com
3824 Huntington Avenue
St. Louis Park, Minnesota 55416
www.weberplanning.com



**BIKO ASSOCIATES
INCORPORATED**
COMMUNITY PLANNING AND DESIGN
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GRAIN BELT BREWERY BOTTLING HOUSE
79 13th Avenue NE, Studio 104
Minneapolis, Minnesota 55413-1073
Phone: 612-623-4000 Fax: 612-623-0200
www.bikoassociates.com

WILLIAM P. SMITH, AICP
*Principal
Transportation
Planner
Urban Designer*
wsmith@bikoassociates.com

HAROLD SKJELBOSTAD, RLA
*Associate
Landscape Architect
Site Designer
Urban Designer*
hskjelbostad@bikoassociates.com



A Post-Krummenacher world—life without variances

*Loren Gordon, AICP
City Planner for Minnetonka*

These are curious times for community planners across the state. Budgets are tight, development activity is down and the Legislature is back in session faced with a deficit budget. Life in the overly cliched, “new normal” right? We are all adapting to what this brings.

Another “new normal” began June 24, 2010. Everyone remembers that day – the day the Minnesota Supreme Court turned 20 plus years of variance statute interpretation on its head. The day the variance died? Maybe. But for some, it was the day the 1980’s statute was reaffirmed, or revived. Nonetheless, the proposed variance bill (House File 52 / Senate File 13) which was supported by APA-MN, intends to clarify variance language and provide definition to “undue hardship.” Although the bill gained many initial supporters, more recent events at the capital have caused some to pull their endorsement. Certainly nothing unusual as far as political drama, but it is telling about what a new statute might mean for cities.

Despite the current uncertainty, communities can take charge of their regulatory approach to bring local control and flexibility. So how is your community addressing variances and general regulation post-Krummenacher?

Since June, the city of Minnetonka has taken three important steps to address the need for flexibility in zoning and land use regulation, two of which were new ordinances to address the need for flexibility in zoning and land use regulation:

The first ordinance developed an approach to address the expansion of non-conforming uses. This ordinance was important for our built-out



suburban community. In researching city variance history, we found that nearly half of the requests were for projects with aspects that fall under the non-conforming use statute. The expansion ordinance provided a necessary tool for the city to address property redevelopment and reinvestment.

The second ordinance moved lot standards out of the zoning and into the subdivision code. This provided a procedure for varying the regulations under the subdivision statute which is not subject to the court decision.

Finally, as a third step, we have identified a few dozen zoning provisions that are candidates for flexibility. Many of these are community accepted standards previously approved by variance.

In many regards, the court decision, as inconvenient as it has been, has forced us to look differently at our regulations, policies, and comprehensive plan. In doing so, we are finding that we need to be more in tune with our code and more open to out-of-the-box thinking about regulation. Approaches such as form-based regulation are no longer as difficult to imagine implementing.

What the heck does the Executive Committee do?

Or, Why Would I Want to be Vice President?

Jean Coleman, Chapter Secretary

We recently said farewell to Mike Darrow after two years as APA MN Vice President and now welcome Trisha Rosenfeld to that position. Several great candidates expressed interest in the Vice President position and we hope this level of interest in Chapter executive positions results in multiple candidates for the next election. The transition with a new member of the Executive Committee offers an opportunity to highlight the role of the Chapter Officers who comprise the Executive Committee.

Chapter Officers are elected every two years, in years opposite district representative elections. The next officer elections will be at the end of 2012. According to the APA MN Bylaws, the primary duties and requirements of the officers are:

President. The President shall: (a) preside at meetings of the Executive Committee and Chapter Board and of the membership; (b) provide leadership on the development of Chapter policies in coordination with the Chapter Board and the association; (c) prepare an annual budget for approval by the Chapter Board; (d) create and/or disband, all Chapter committees and appoint and discharge committee chairs unless otherwise provided in these Bylaws; (e) represent the Chapter on the APA Chapter President's Council; (f) call meetings and perform other duties required by these Bylaws or customary to the office; and (g) be a member of the Association and the Chapter.

Vice-President. The Vice-President shall: (a) assist the President in the guidance and coordination of committee activities; (b) carry out any other duties assigned by the President; (c) assume the duties of the President if necessary; and (d) perform other duties required by the Bylaws or customary to the office; and (e) be a member of the Association and the Chapter.

Secretary. The Secretary shall be responsible for (a) preparing and reporting minutes of Chapter Board and Executive Committee meetings; and (b) performing other duties required by these Bylaws or customary to the office; and (c) the Secretary shall be a member of the Association and the Chapter.



Treasurer. The Treasurer shall: (a) receive and disburse Chapter funds; (b) collect Chapter dues and assessments not collectible by the National office; (c) assist the President in preparing an annual budget; (D) maintain financial bank and tax records which shall be open to inspection by officers and subject to audit; (e) prepare quarterly and annual financial reports for review by the Executive Committee; (f) perform other duties required by these Bylaws, or customary to the office; and (g) be a member of the Association and the Chapter.

In addition to the individual duties of the Officers, they meet between board meetings as the Executive Committee. The primary function of the Executive Committee is to ensure the smooth operation of the Chapter Board and work with the Chapter Administrators between Board meetings. Over the past two years, the Executive Committee has also ventured into the realm of auditing the Chapter finances and approving participation with National APA in two amicus curiae briefs on federal cases stemming from Minnesota lawsuits. The Chapter Board has also discussed authorizing the Executive Committee to function also as a Finance Committee. A final decision will be made at an upcoming Board meeting.

As Vice President, Mike Darrow took on the additional duties of managing website improvements as part of increased member services. Trisha Rosenfeld was formerly our Chapter "webmaven" and will continue to be engaged with the website as Vice President.

The Chapter Officers are committed to making APA MN a fun, engaged, and effective organization. We encourage you to contact any of the Chapter Officers at any time to discuss items of interest or concern. Current Officers are listed on the last page of this newsletter.

New Brown Bag Committee Chair

A new Brown Bag Program Committee Chair has been appointed. **Matthew Parent**, Anoka County Transportation Planner, has taken over organizing these events for the coming year. Matt would welcome any suggestions you may have for future Brown Bag Lunches; he can be reached at: matthew.parent@co.anoka.mn.us or via phone at 763.862.4291.



Matt began working with Anoka County as an intern two years ago and is now working with the County full time in the Highway Department. He earned his planning degree from UW River Falls, with a focus in GIS, which has served him well at the County.

We wish to thank Joe Hogeboom, Mark Grimes, Lisa Wittman and the entire Planning Department at Golden Valley for the years they have promoted and planned these highly successful programs. Many hours were spent putting together 12 to 15 programs each year, attended by dozens of our Metro Area members. We appreciate all of their efforts. They will continue to put together other events for the benefit of our chapter.

Planners on the Move...

Kimberly Johnson recently joined the City of Waseca as Planning Director. Johnson will be managing the Planning and Community Development Department which administers all Planning and Zoning, Economic Development, Historic Preservation and Housing programs for the City. Johnson is excited about the new opportunities and challenges this position offers, and is pleased to be working with historic preservation, again. Prior to her position in Waseca, Johnson held the position of City Planner in Faribault for approximately 10 years.

Upcoming Issues of *planning minnesota* to Highlight Work of Consultants

Focus on Contributions of Planning Consultants

This year, the Newsletter Editors want to bring a focus to a special part of our planning community. We want to highlight the many and varying contributions of consultants to the world of planning. For those of us who need to study a specialty, have a specific project, need to extend our staff, but cannot do so permanently, consultants can be just the right answer.

Planning Consultants are available everywhere in the state. Some are part of small firms, others are part of very large firms, many are members of our Minnesota Chapter of APA and many have received their AICP certification.

These consultants provide expertise in a variety of topics: environmental, transportation, long-range planning, zoning, comprehensive plans, neighborhood plans, downtown plans, ordinance writing, grant writing and many, many other topics. They are experts in small town, rural community, developed city, township, county and state-wide planning topics.

We would like to highlight the work and contributions of consultants over a series of 3 of 4 editions of the newsletter. If you are a consultant, or have worked with a consultant who you think should be highlighted, let us know.

CONSULTANTS: *Please send an email to newsletter@mnapa.com to request a form that asks each consulting firm to respond to specific questions and provides guidelines on photos and exhibits to include when we highlight your firm.*

APA Minnesota Brown Bag Lunch Event

Community Character: Principles for Design and Planning

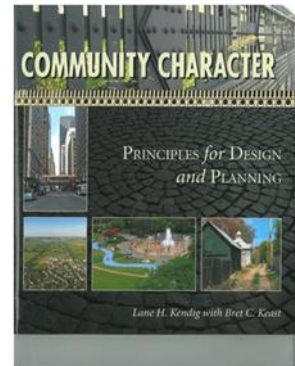
Presented by Lane Kendig

When: March 31, 2011 12:00 noon to 1:00pm

Where: Wayzata City Hall

About *Community Character* :

Community Character provides a design-oriented system for planning and zoning communities, but accounts for how people who participate in a community live, work and shop there. The relationships that Lane Kendig defines here reflect the complexity of the interaction of the built environment with its social and economic uses, taking into account the diverse desires of municipalities and citizens. Among the many classifications for a community's "character" are its relationship to other communities, its size and the resulting social and economic characteristics.



According to Kendig, most comprehensive plans and zoning regulations are based entirely on density and land use, neither of which effectively or consistently measures character or quality of development. As this book shows, there is a wide range of measures that define character, and these vary with the type of character a community desires to create. Taking a much more comprehensive view, this book offers "community character" as a real-world framework for planning for communities of all kinds and sizes.

About Mr. Kendig:

Lane founded Lane Kendig, Inc. in 1982 as an interdisciplinary firm that provided planning, plan implementation, and design consulting services to regional agencies, communities, county and local governments, and developers. Lane has experience in land use planning, growth management, housing, environmental planning, zoning and land use controls, site and land design and impact and feasibility analyses. He has worked throughout the United States and in Saipan, Commonwealth of the Northern Mariana Islands. His projects include comprehensive plans and implementing regulations; zoning, subdivision, and land development regulations and impact and management systems. He has written plans and ordinances separately and simultaneously and has studied special problems concerning economic development, transportation, growth management, special zoning regulations and open space programs, among others.

Research in the areas of land use, community character, suburban and rural design and environmental protection is an important aspect of Lane's practice, which contributes to his ability to provide state-of-the-art land use plans and controls. Lane has developed computer programs that address land use, nonpoint source pollution, transportation and development impacts and buffer-yards. This specialized software improves the firm's internal capabilities and cost effectiveness. He is the author of *Performance Zoning; Too Big, Boring, or Ugly: Planning and Design Tools to Combat Monotony*, *The Too-big House* and *Teardowns; Traffic Sheds, Rural Highway Capacity, and Growth Management; New Standards for Nonresidential Uses* (all published by the American Planning Association), as well as many articles on planning.

Lane represents both municipal and private sector clients in litigation, where he has served as an expert witness in Florida, Illinois, Missouri, Pennsylvania and Texas. He and the firm are also noted for designing the Fields of Long Grove, a 160-acre conservation development honored for the Best in American Living Award from the **National Association of Home Builders**, *Better Homes and Gardens* and *Professional Builder* magazines, as well as many other residential developments as commercial projects to the level of regional malls.

After 41 years of practice, Lane has stepped down as president of Kendig Keast Collaborative, but remains active with the firm as a strategic advisor available for specific projects or problem areas. He will continue writing, and is working on an updated Performance Zoning book to illustrate the changes in its 35 years of use. Attendees are welcome to bring their own lunch to this event. Please RSVP to Matthew Parent at matthew.parent@co.anoka.mn.us by **Monday, March 28th**.

APA Minnesota Brown Bag Lunch Event

Access to Destinations Study

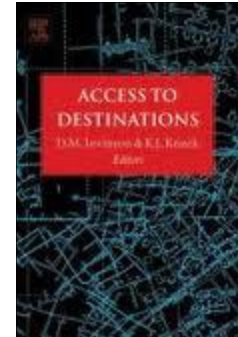
Presented by Dr. David Levinson

When: April 14th - 12:00 noon to 1:30pm

Where: University of Minnesota

<http://www1.umn.edu/twincities/maps/MechE/>

Room 1130 of the Mechanical Engineering Building



About the *Access to Destinations Study*:

Access to Destinations is an interdisciplinary research and outreach effort coordinated by the Center for Transportation Studies at the University of Minnesota, with support from sponsors including the Minnesota Department of Transportation, Hennepin County, the Metropolitan Council and the McKnight Foundation.

The Access to Destinations Study takes a new approach to understanding how people use the transportation system, and how transportation and land use interact. At the heart of this approach is the concept of accessibility: the ability of people to reach the destinations that they need to visit in order to meet their needs. By focusing on accessibility—rather than simple congestion measures—the Access to Destinations Study aims to produce a more complete and meaningful picture of transportation and its role in our lives.

This presentation will discuss the research and results of this five-year study, along with a newly created online mapping tool to help those who make transportation and land-use decisions in the Twin Cities region capture variations in accessibility to different types of destinations for travelers who drive, bike, walk, or use transit.

To learn more about accessibility and its role in the Access to Destinations Study, visit www.cts.umn.edu/access-study.

About Dr. David Levinson:

David Levinson's current research focuses on understanding the process of network growth, evaluating transportation technology and policy and modeling travel behavior. He teaches courses in Transportation Policy, Planning, and Deployment, Transportation Systems Analysis, Transportation and Land Use, Transportation Economics and Transportation Engineering. He is the director of the Nexus research group, exploring issues related to networks, economics and urban systems, and is a co-leader of the interdisciplinary Access to Destinations Study.



Levinson earned a Ph.D. in Engineering at the University of California, Berkeley in 1998. His dissertation, "On Whom the Toll Falls," focuses on local decision making for the financing and management of roads. Before joining the University of Minnesota, he worked as a transportation planner, developing integrated transportation/land-use models used in Montgomery County, Maryland. He was awarded the 1995 Tiebout Prize in Regional Science.

Attendees are welcome to bring their own lunch to this event. Please RSVP to Matthew Parent at matthew.parent@co.anoka.mn.us by **Tuesday, April 12th**.

Employment Opportunity

Job Title: Associate Planner

Location: Breezy Point, MN

Salary Range: \$22.60 to \$31.64 per hour

Link: www.cityofbreezypointmn.us

Contact: Joe Rudberg
City of Breezy Point, MN
8319 Co. Rd. 11
Breezy Point, MN 56472
218-562-4441
jrudberg@cityofbreezypointmn.us

Deadline: March 10, 2011

Job Description

The City of Breezy Point, MN is seeking a full time, benefited Associate Planner to address development, zoning regulations, shoreline regulations, policies and the implementation of the recently adopted Comprehensive Land Use Plan. Breezy Point is a resort community in the Brainerd Lakes area located about 25 miles north of Brainerd on beautiful Pelican Lake.

Minimum Qualifications

4-year degree in planning or related field; 2 years of related experience (internships may apply towards experience). Excellent interpersonal skills. Ability to write effectively; ability to operate personal computers with proficiency in Microsoft Word, Excel; proficiency in GIS a plus; valid driver's license. Must possess ISTS inspector license (or ability to receive one in 1 year).

Benefits

Position includes benefits of health and life insurance, vacation, sick time and holiday benefits. Flexible spending plan includes health care and dependent care reimbursements.

Application Instructions:

For complete position description and application see our web site at:

www.cityofbreezypointmn.us.

Resumes will not be accepted without completed application, and are due by March 10, 2011.

eConference: Planning Healthy and Child-friendly Communities

This *eConference* brings together outstanding leaders, expert professionals and scholars renowned for their breadth of vision and depth of experience. Audio presentations, transcripts of keynote speeches, slides and papers presented at the 48th IMCL Conferences are now available online.

This is an invaluable resource for your city, firm or university - insightful strategies, knowledge, and tools to guide healthy and child-friendly planning policies. View at: <http://www.livablecities.org/conferences/econference>.

Presentations include: Health and the Built Environment; Healthy Transportation Planning & Livable Streets; Children and the Urban Environment; Children & Nature; Children & Youth Participate in Planning; Planning & Urban Design Challenges.

Register for the eConference and listen to, review or download all the presentations. To register, please create a user account at <http://www.livablecities.org/user/register>. You will receive an email with a temporary password that you will use the first time you login. Then, visit the eConference page in the Conferences menu and register for the Conference. Registration is \$495. Access is available until May 31st.

If you have a question, please contact:
Suzanne.Lennard@LivableCities.org

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March, 2011 Event Calendar

For updates and more event details, visit MnAPA.com and click on **Member Events**.

Tuesday, March 1 Webinar: Green Streets as a Community Revitalization Strategy

12:00 noon to 1:30pm Central time. Explore how Green Streets can be a sustainable storm water management strategy that also contributes to community redevelopment. Many Midwestern cities are using 'green street' strategies in place of routine street rehabilitation to address storm water, transportation, and neighborhood stabilization goals. By combining transportation choice with environmental strategies, a green street product can support redevelopment efforts from multiple stakeholder perspectives. Attendees will see a blend of planning, engineering, and neighborhood revitalization strategies from each panelist in a case study format. HUD, DOT, and EPA representatives will highlight the federal and state options to use agency funding to implement green streets projects in your community. No webinar cost, however, attendees need to reserve a webinar seat in advance at: <https://www2.gotomeeting.com/register/968278187>

Thursday, March 3 American Society of Landscape Architects - Minnesota Chapter Legacy Project

6:00 to 9:00pm (includes reception following panel discussion) University of Minnesota College of Design, 100 Rapson Hall, 89 Church Street SE, Minneapolis, MN 55455. Presented by the U of M Department of Landscape Architecture.

Please join us for "THE FOUNDERS", a panel discussion with Herb Baldwin, Roger Clemence, Roger Martin, and Peter Olin on the early days of the Department of Landscape Architecture and reflections on the impact that landscape architects have had on shaping the Minnesota environment. Moderators: Carrie Christensen (MLA '08), principal-in-charge, ASLA-MN Legacy Project Professor John Koepke (BLA '81) ASLA. Event is free but registration is requested: <http://z.umn.edu/founders>

In collaboration with American Society of Landscape Architects Minnesota Chapter (ASLA-MN), the University of Minnesota College of Design Department of Landscape Architecture will undertake a process of oral history gathering, focusing on the stories of key landscape architectural contributors from the second half of the 20th century. The histories will be archived with the Northwest Architectural Archives, University of Minnesota Libraries. For more information about the project and event, contact aslamnlegacy@gmail.com or call 612-250-1320.

Thursday, March 3 Bi-Annual AICP Exam Panel

APA Minnesota is sponsoring its bi-annual AICP exam panel on Thursday, March 3rd from 2:00 to 4:00pm at the St. Louis Park City Hall, 5005 Minnetonka Boulevard. The event will feature panelists who took the exam in November 2010. If you are taking the May exam, or thinking about becoming a candidate in the future, this panel discussion will provide an overview of the exam and ideas on how to prepare. Please RSVP for the event by contacting Rita Trapp at 612-252-7135 or rita@hkqi.com.

Thursday, March 10 Historic Preservation and Form-Based Codes

12 noon to 1:30pm Central time. An urban designer joins with an historic preservationist for an interesting webinar in March. Please join us for Historic Preservation and Form-Based Codes on Thursday, March 10, beginning at 12 noon. Also, FBCI continues to offer three recorded webinars about form-based codes. More information follows, below. AIA CES and AICP CM credits available for the March 10 webinar. AICP CM credits available for recorded webinars. 90 minutes. [REGISTER HERE](#)

Form-based codes and historic preservation districts begin from the same point: an analysis of existing community fabric. Jim Lindberg and Stefan Pellegrini combine the unique insights of a preservationist and a city designer in a lively 90-minute presentation. They'll provide examples of form-based codes within historic districts, and discuss how to treat historic districts within form-based codes, using case studies from towns large and small. Q/A will follow. 1.5 AIA CES and AICP CM (approval pending).

March, 2011 Event Calendar

Thursday, March 24 **The Driehaus Form-Based Codes Award Call for Submissions**

The Driehaus Form-Based Codes Award Sponsored by the Form-Based Codes Institute with the Generous Support of the Richard H. Driehaus Charitable Lead Trust.

Deadline is March 31. For Details Please [Click Here](#). The Board of Directors of the Form-Based Codes Institute (FBCI) is pleased to announce its fifth annual award for achievement in the writing and implementation of Form-Based Codes.

Entries should be codes intended to guide development consistent with a master plan, and should advance the field of Form-Based Code writing. Submitted codes must have been adopted into law by a unit of local government. Submission of codes that show built results and "lessons learned" is encouraged.

Submissions must be received by FBCI no later than 5:00pm Central time on Thursday, March 31, 2011. Recognition Award winners will be announced June 3, 2011, during Today's Best Form-Based Codes session at the Congress for the New Urbanism's nineteenth annual meeting in Madison, Wisconsin. Winners will be invited to participate in a discussion of their codes at the Congress. Additionally, winning entries will be featured on the FBCI web site. Anyone is eligible to submit a legally adopted Form-Based Code. However, if any current jury member or member of their firm or organization are, or were, part of a codewriting team or a participant in the design, writing, adoption, or implementation process, that code is ineligible for review in the 2011 program.

Submission Information. There is no entry fee. For complete information and to obtain detailed instructions, entry and submission forms, and to see previous winners, go to the FBCI website - www.formbasedcodes.org. Questions may be submitted to Carol Wyant, FBCI Executive Director at 312.498.7166 or carol@formbasedcodes.org.



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Leadership Directory

executive committee

President
Lance Bernard
Minnesota Dept. of Health
phone: 651-201-4898
lance.bernard@state.mn.us

Vice-President
Trisha Rosenfeld
City of Belle Plaine
Phone: 952-873-5553
trisharosenfeld@msn.com

Secretary
Jean Coleman
CR Planning, Inc.
phone: 612-588-4904
jcoleman@crplanning.com

Treasurer & Conference Advisor
Adam Fulton, AICP
City of St. Louis Park
phone: 952-928-2841
afulton@stlouispark.org

directors

Southeast District Director
Chris Moates
MnDOT
phone: 651-366-4790
chris.moates@state.mn.us

Southwest District Director
Bruce Peterson, AICP
City of Willmar
phone: 320-235-8311
bpeterson@ci.willmar.mn.us

Central District Director
Crystal Foust, AICP
City of Watertown
phone: 952-955-2681
cfoust@ci.watertown.mn.us

Northeast District Director
Charles Froseth, AICP
City of Duluth
phone: 218-730-5325
cfroseth@duluthmn.gov

Northwest District Director
Wayne Hurley, AICP
West Central Initiative
phone: 218-739-2239
wayne@wcif.org

Metro District Director
Andrew Gitzlaff, LEED AP, AICP
Washington County Public Works
phone: 651-430-4338
andy.gitzlaff@co.washington.mn.us

Metro District Director
Suzanne Rhees, AICP
MnDNR Parks and Trails Division
phone: 651-259-5586
suzanne.rhees@state.mn.us

Metro District Director
Gina Mitchell, AICP
Bolton & Menk, Inc.
phone: 952-890-0509
ginami@bolton-menk.com

directors

Citizen Planner Director
Cathy Waldhauser
Golden Valley
phone: 763-529-3946
cwald@bitstream.net

Student Director
Lyssa Leitner
Hubert H Humphrey Institute
phone: 651-245-8362
leit0056@umn.edu

APA MN Past President
Carolyn Braun, AICP
City of Anoka
phone: 763-576-2722
cbraun@ci.anoka.mn.us

committee chairs

Awards Committee Co-chair
Breanne Rothstein, AICP
City of Minnetrista
phone: 952-241-2522
brothstein@ci.minnetrista.mn.us

Awards Committee Co-chair
Jay Blake
City of Princeton
phone: 763-389-2040
jblake@princetonmn.org

Networking Committee Chair
Loren Gordon, AICP
City of Minnetonka
phone: 952-939-8296
lgordon@eminnetonka.com

Legislative Committee Co-Chair
Andrew Mack
Greater Bemidji Area Joint Planning Board
phone: 218-759-3582
andrew.mack@jpbqba.org

Legislative Committee Co-Chair
Bob Patton, AICP
Mn Dept. of Agriculture/EQB
phone: 651-201-6226
rtpatton@aol.com

Law and Planning Committee Chair
Cynthia Kirchoff, Esq, AICP
Carlson & Associates, Ltd.
phone: 651-287-8640
ckirchoff@carlsonassoc.com

Program Committee Chair
Mark Grimes, AICP
City of Golden Valley
phone: 763-593-8097
mgrimes@goldenvalleymn.gov

Conference Advisor
Bryan Gadow, AICP
City of Wayzata
phone: 952-404-5312
bgadow@wayzata.org

Conference Co-Chair
La Tisha Birkeland
City of Waconia
phone: 952-442-3110
latisha_birkeland@yahoo.com

committee chairs

Conference Co-Chair
Tim Gladhill
City of Ramsey
phone: 763-576-4308
tgladhill@ci.ramsey.mn.us

Professional Development Officers:
Jane Kansier, AICP
City of Prior Lake
phone: 952-447-9812
jkansier@cityofpriorlake.com

Rita Trapp, AICP, LEED AP
Hoisington Koegler Group, Inc.
phone: 612-252-7135
rita@hkqi.com

other representatives

Faculty Liaison
Carissa Schively Slotterback, PhD, AICP
Humphrey Institute of Public Affairs
phone: 612-626-3193
cschively@umn.edu

Minnesota Design Team Liaison
Sam O'Connell, AICP
Dakota County
phone: 952-891-7105
sam.oconnell@co.dakota.mn.us

Web Designer
Jennifer Salita
Idea Park
phone: 612-226-3316
jennifersalita@gmail.com

Planning Minnesota Editors
Bob and Kate Garwood
phone: 763-862-4230
newsletter@mnapa.com

MACPZA Liaison
Mark Erickson
Renville County Govt. Services Center
phone: 320-523-3768
mark_e@co.renville.mn.us

Legislative Education Coordinator
Thomas Jensen, AICP
Circle Pines
phone: 763-780-4839
thomashjensen@aol.com

Region VI Student Representative
Avital Barnea
Hubert H. Humphrey Institute
barn0390@umn.edu

Student Representative
Hillary Holmes
Hubert H. Humphrey Institute
holme315@umn.edu

Planners Emeriti Liaison
Gene Franchett, AICP
phone: 952-322-2664
franchett@charter.net

chapter contact information

Chapter Administrators
Otto and Peggy Schmid
9288 Beverly Drive,
Breezy Point, MN 56472
phone: 888-882-5369
mnapa@buffleheadweb.net

national officers

APA Representative
Cynthia Bowen, AICP
cbowen@rwa.com

AICP Region IV Representative
Lee Brown, FAICP
lbrown@teskaassociates.com



Regular Planning Commission

Item #: 6.7.

Date: 04/07/2011

By: JoAnn Shaw
Community Development

Information

Title:

Zoning Bulletins

Background:

Enclosed are zoning periodicals for your review.

Notification:

Observations:

Funding Source:

Staff Recommendation:

Committee Action:

Attachments

Zoning Bulletins

Form Review

Inbox

Tim Gladhill

Aaron Backman

Form Started By: JoAnn Shaw

Final Approval Date: 03/30/2011

Reviewed By

Tim Gladhill

Aaron Backman

Date

03/30/2011 09:30 AM

03/30/2011 02:03 PM

Started On: 03/28/2011 12:16 PM

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Zoning Bulletin

in this issue:

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Standing—In Court, Property Owners Raise Issue
of Opponent’s Standing to Appeal Enforcement Decision..... 4

Validity of Zoning Regulations—General Plan
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Company Says Local Planning Commission Has
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In 2008, Eddins applied for a permit from the city's Community Development Department (the "Department"). Eddins sought the permit to allow one of his current tenants to replace an existing recreational vehicle with a newer recreational vehicle. The Department denied Eddins' requested permit. The Department told Eddins that the Ordinance prohibited him from placing additional recreational vehicles in his park.

Eddins appealed the Department's decision to the city's Planning and Zoning Commission (the "PZC"). He argued that he had a grandfather right to replace existing recreational vehicles with new or substitute recreational vehicles. The PZC upheld the Department's decision. The PZC concluded that Eddins' grandfather right under the Ordinance only permitted him to keep existing recreational vehicles in the mobile home park; it did not allow him to bring in additional or substitute recreational vehicles.

Eddins appealed to the city council. The city council upheld the PZC's decision.

Eddins then filed an action in district court. He argued that he had a due process right to continue his nonconforming use of renting spaces for both manufactured homes and recreational vehicles after the Ordinance was enacted.

The city argued that Eddins did not have a right to substitute new recreational vehicles because the grandfather right in the Ordinance did not allow it.

The district court upheld the PZC's decision.

Eddins appealed.

DECISION: Reversed.

The Supreme Court of Idaho held that Eddins' replacement of recreational vehicles constituted a continuation of his nonconforming use and thus was protected by due process.

The court explained that, under the due process clause of the United States Constitution and the Idaho State Constitution, individuals have a right to continue a "nonconforming use." In other words, due process requires that a nonconforming use be allowed to continue after a new zoning ordinance is enacted. Still, the right to continue a nonconforming use is "not without limitation." Nonconforming uses may not be expanded or enlarged.

The court further explained that in determining, on a case-by-case basis, whether a nonconforming use has been enlarged or expanded, the court focuses on: whether there has been some change in the fundamental or primary use of the property.

In this case, Eddins' fundamental or primary use of the property—"both before and after the [O]rdinance was passed—was to rent spaces for both manufactured homes and recreational vehicles." The court determined that replacing existing recreational vehicles with new recreational vehicles was "not an expansion or enlargement of Eddins' nonconforming use." This was because that act of replacement did "nothing

cial property in the town. He also held a mortgage on property abutting the Warringtons' property. He reportedly believed that "[i]nconsistent enforcement of zoning adversely affects the development and sale of [his] residential real estate and adversely affects the rental [value] of [his] commercial real estate."

The town's building inspector "agreed with Blair's position." However, he refused to issue the requested cease and desist order. Blair appealed to the town's zoning board of appeals (the "Board"). The Board eventually issued a cease and desist order against the Warringtons.

The Warringtons then appealed to the superior court. They argued that the Board's enforcement order was invalid because Blair did not have standing to appeal from the building inspector's denial of Blair's enforcement request. The Warringtons argued that there were no material issues of fact in dispute, and asked the court to issue summary judgment in their favor on the law alone.

The Board and Blair opposed the Warringtons' motion for summary judgment. They argued that the Warringtons had waived the issue of standing because they had failed to challenge Blair's standing during the administrative proceedings (i.e., when the enforcement issue was before the Board).

The judge agreed with the Board and Blair. Summary judgment was issued in favor of the Board and Blair.

The Warringtons appealed.

DECISION: Reversed.

The Appeals Court of Massachusetts held that the issue of whether Blair had standing as a "person aggrieved" was jurisdictional and thus could not be waived.

The court explained that, under Massachusetts statutory law—G.L. c. 40A, § 8—a "person aggrieved" has the right to "start an administrative proceeding seeking to compel enforcement" of zoning regulations. The same standing requirement—that the person be aggrieved—governs appeals from a zoning board to the court under G.L. c. 40A, § 17.

With the standing requirement of § 17, "[a] well-developed body of law holds that [s]tanding is an issue of subject matter jurisdiction." Therefore, lack of standing cannot be waived and may be raised at any stage of the proceedings. Since "person aggrieved" means the same thing in § 8 as it does in § 17, the court concluded that just as status as an aggrieved person is a jurisdictional condition to maintaining an appeal to court under § 17, so too then status as an aggrieved person is a jurisdictional condition to maintaining an appeal to a board of appeals under § 8. The court concluded therefore that "the standing requirements of § 8, like the standing requirements of § 17, [cannot be] waived by failure to raise them before the board."

Second, because of this failure, it found that the FMP requirements were in excess of the county's police powers. Third, the trial court also found the FMP conflicted with state law prohibiting a local government entity from conditioning the issuance of land use approval on the granting of conservation easements (Civ. Code § 815.3).

The county appealed.

DECISION: Reversed.

The Court of Appeal, Fifth District, California, held that: (1) the FMP bore a reasonable relationship to the loss of farmland; and (2) therefore was within the county's police powers; and (3) the FMP did not violate § 815.3.

The court explained that in order to be valid on its face, the FMP's mitigation requirement—which was legislation that applied generally—had to be reasonably related to the negative public impact of the development project (i.e., the loss of farmland). The court found that the FMP's mitigation requirements bore a reasonable relationship to the loss of farmland. Agriculture was the county's leading industry. Thus, real estate development converting agricultural land to residential use had a "deleterious impact on this valuable resource." Although, under the FMP's mitigation requirements, the developed farmland was not replaced; an equivalent area of comparable farmland was "permanently protected from a similar fate." This additional protection of farmland that could otherwise have soon been lost to development promoted the county's objective to conserve agricultural land for agricultural uses. Furthermore, the court found that "the requirement of rough proportionality between the mitigation measure and the impact of the development project [was] met." The mitigation measure was roughly proportionate to the impact of development as the FMP required a one-acre: one-acre ratio of replacement.

Since a reasonable relationship existed between the FMP requirements and the impact of converting farmland, the FMP was within the county's police power, concluded the court.

BIA had also argued that the FMP violated § 815.3. That statute prohibited local governments from conditioning land use approval on the applicant's granting of a conservation easement. The court found that the FMP did not violate § 815.3 because the FMP did not require the "applicant" (i.e., the developer) to grant the easement. Rather, the FMP allowed the applicant to arrange for a third party to grant a conservation easement as an alternative to the applicant itself granting the easement.

See also: *San Remo Hotel L.P. v. City And County of San Francisco*, 27 Cal. 4th 643, 117 Cal. Rptr. 2d 269, 41 P.3d 87, 32 Env'tl. L. Rep. 20533 (2002).

See also: *Pennisi v. Department of Fish & Game*, 97 Cal. App. 3d 268, 158 Cal. Rptr. 683 (1st Dist. 1979).

vate water system “due to the 18 years [(i.e., from 1990 to 2008)] of permission the Muths had been given to use their private water systems.”

The Authority argued that the Muths’ vested rights claim failed. The court of common pleas agreed and dismissed the Muths’ complaint.

The Muths appealed.

DECISION: Affirmed.

The Commonwealth Court of Pennsylvania held that the Muths were not entitled, under the “vested rights doctrine,” to recover against the Authority for requiring them to join the municipal water line.

The court explained that “[t]he vested rights doctrine permits a landowner to use his property without obtaining a variance.” The doctrine applies only “to those cases where the applicant, in good faith, relies upon a permit issued in error and incurs significant non-recoverable costs,” said the court. Here, the Muths did not incur significant costs in reliance upon a permit issued by either the township or the Authority. No related permit was ever issued to the Muths. Accordingly, the court concluded that the Muths could not claim nor recover against the Authority on the basis of vested rights.

See also: *Chateau Woods, Inc. v. Lower Paxton Tp.*, 772 A.2d 122 (Pa. Commw. Ct. 2001).

Telecommunications Uses—Telecommunications Company Says Local Planning Commission Has Jurisdiction Over Its Proposed Tower

Adjacent property owner maintains the Public Service Commission instead has jurisdiction

Citation: *Kentucky Public Service Com’n v. Shadoan*, 2010 WL 4679513 (Ky. 2010)

KENTUCKY (11/18/10)—This case involves the construction of a Kentucky statute governing the siting of cellular antenna towers to determine whether jurisdiction over matters relating to cellular tower placement and construction rest with the local planning unit or the Kentucky Public Service Commission (an administrative body that regulates utilities in Kentucky).

The Background/Facts: In September 2005, Bluegrass Wireless filed with the Kentucky Public Service Commission (the “PSC”) an application to secure a certificate of public convenience and necessity for the construction of a proposed cellular tower on certain property in a Kentucky city.

Adjacent property owners Glenn and Sue Shadoan sought to intervene in the application process. The PSC granted their request. Thereafter, however, Bluegrass Wireless asked the PSC to dismiss the application

The court interpreted § 100.987's provision that a planning unit "may plan for and regulate the siting of cellular antenna towers" as meaning that a planning unit has the "discretion to enact regulations pertaining to cellular antenna towers ... but this exercise of discretion is not a condition of jurisdiction." Thus, as long as the area of the proposed cellular tower has a planning unit that has adopted planning and zoning regulations, the planning commission of that planning unit has jurisdiction over matters relating to cellular tower placement and construction, not the PSC. This is true "regardless of whether the planning unit has enacted regulations specifically relating to cellular towers," said the court.

Here, the court concluded that because the local planning unit had adopted planning and zoning regulations that governed the area where Bluegrass Wireless proposed to construct a cellular tower, the local planning commission had jurisdiction over the proposed tower, not the PSC.

See also: *Kentucky Ins. Guar. Ass'n v. Jeffers ex rel. Jeffers*, 13 S.W.3d 606 (Ky. 2000).

See also: *Combs v. Hubb Coal Corp.*, 934 S.W.2d 250 (Ky. 1996).

Case Note: In its decision, the court added that, where a planning unit has adopted planning and zoning regulations but has not enacted regulations specifically related to cellular towers: "the applicant will ... still need to meet the general restrictions of the particular zone in which the proposed cell tower is to be constructed." For example, the applicant will need to meet restrictions such as, among others, permitted uses within the zone or height and setback requirements.

Zoning News from Around the Nation

ARIZONA

In November, Proposition 204—the Arizona Medical Marijuana Act—was passed. Under the new law, cities and towns may adopt "reasonable regulations" regarding the location and operations of medical marijuana dispensaries and growing operations. Only 124 dispensaries will be allowed statewide, and every one of Arizona's 15 counties will have at least one dispensary. The law also permits qualifying patients who live more than 25 miles from a dispensary to grow up to 12 of their own plants.

Reportedly, the Arizona Department of Health Services hopes to present a final draft of related rules by February, with final rules published

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Pursuant to the County Code, landscape contracting was not permitted as of right in the RDT zone. However, it was allowed with the grant of a special exception. Butler had not obtained a special exception prior to establishing her landscape contracting business. After receiving a Notice of Violation from the County's Department of Permitting Services, Butler applied for a special exception in July 2007.

The county zoning hearing examiner recommended Butler's special exception application be denied. The county's Board of Appeals (the "Board") denied Butler's application. That denial was based on the finding that, in this particular location, Butler's landscape contracting business presented "non-inherent adverse effects sufficient to warrant denial"

County Code § 59-G-1.21 required the Board to "consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location." "Inherent adverse effects" were defined under the Code as those involving "the physical and operational characteristics necessarily associated with the particular use, regardless of physical size or scale of operations." "Non-inherent adverse effects" were defined as those involving "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site."

The Board had found that Butler's landscape contracting business presented non-inherent adverse effects sufficient to warrant denial because (1) due to the proximity to a neighboring property owned by Cora Weeks (42 feet to Weeks' residence and 22 feet from her property line), the commercial traffic traveling on Butler's driveway would have "serious adverse consequences on [Week's] property"; (2) "the noise generated by trucks and Bobcats when operated in reverse, would have serious adverse consequences on both adjoining neighbors"; and (3) "the configuration of the lots and of the proposed use would produce traffic and noise on the property having immediate adverse effects on the adjoining neighbors."

Butler appealed the Board's decision to the county circuit court.

The circuit court reversed the Board's decision. The court found that all of the adverse effects noted by the Board were "inherent to the operation of a landscaping business" It held that the inherent effects of a landscaping company operation on surrounding property do not rise to the level of non-inherent effects. As such, the court concluded that the adverse effects from Butler's landscaping business were not sufficient to deny Butler's special exception application.

The county and Weeks appealed to the Court of Special Appeals. On its own initiative, the court of appeals issued a writ of certiorari and considered the appeal.

DECISION: Reversed.

Validity of Zoning Regulations—Signs—Sign Ordinance Prohibits Signs Above a Certain Size, But Exempts Categories of Signs

Resident challenges constitutionality of sign ordinance

Citation: *Bowden v. Town of Cary*, 2010 WL 5071613 (E.D. N.C. 2010)

NORTH CAROLINA (12/07/10)—This case addressed whether a sign ordinance was unconstitutional in violation of the First Amendment.

The Background/Facts: William David Bowden was a resident in the town. In July 2009, frustrated with what he considered an inadequate resolution of a road water runoff problem, Bowden painted a sign on the front of his house. The sign was approximately 48 square feet in size. In large fluorescent orange and pink letters, it read: “Screwed by the Town of Cary.”

In July 2009, the town issued to Bowden a Notice of Zoning Violation. The town informed Bowden that his sign was in violation of the town’s Sign Ordinance. More specifically, the town said that Bowden’s sign violated § 9.3.2(S). That provision prohibited “residential signs” from exceeding five square feet.

In November 2009, the town issued to Bowden a second Notice of Zoning Violation. That notice informed Bowden that his sign was in violation of (1) § 9.3.2(X)(2) of the Sign Ordinance, which prohibited “wall signs” over two square feet in area; and (2) § 9.8.3(B) of the Sign Ordinance, which prohibited the use of fluorescent pigments in signs.

Bowden brought a civil rights action against the town. He asked the court to declare that the town’s Sign Ordinance violated the First Amendment of the United States Constitution. Among other things, Bowden argued that the Sign Ordinance, as applied to his protest sign, was “an invalid content-based restriction on speech.”

Bowden asked the court to find that there were no material issues of fact in dispute and to issue summary judgment in his favor based on the law alone.

DECISION: Motion granted.

The United States District Court, E.D., North Carolina, Western Division, held that the town’s Sign Ordinance was constitutionally invalid.

In reaching this conclusion, the court first determined that the Sign Ordinance was content-based (as opposed to content-neutral). Whether the ordinance was content-based or content-neutral impacted the level of scrutiny the court would apply in deciding whether the challenged ordinance violated the Constitution. The court found that the Sign Or-

Permits-Voting/Disqualification— Board Approves STE Plan Application For Store Renovations

Neighbors argue for reversal of approval because testifying witness for store was former town planner

Citation: *Cortesini v. Hamilton Tp. Planning Bd.*, 2010 WL 5071068 (N.J. Super. Ct. App. Div. 2010)

NEW JERSEY (12/14/10)—This case addressed the issue of whether a professional planner, who formerly was employed by the township planning board as its planner, was prohibited from testifying in front of the board in support of an application for site plan approval.

The Background/Facts: In 2009, Wal-Mart Real Estate Business Trust (“Wal-Mart”) decided to renovate its store in the township. The proposed renovation would result in a net increase of 5669 square feet of store space and would add 46 parking spaces. The proposed renovation required a new site plan approval from the township’s planning board (the “Board”).

The Board approved Wal-Mart’s application for site plan approval. Thereafter, other property owners (the “Neighbors”) in the township challenged the Board’s approval. Among other things, the Neighbors argued that the site plan approval must be reversed because one of the witnesses—Allen Schectel—who testified for Wal-Mart’s application was a professional planner who was formerly employed by the Board as a planner.

The trial court affirmed the Board’s approval.

The Neighbors appealed.

DECISION: Affirmed.

Among other things, the Superior Court of New Jersey, Appellate Division, held that Schectel was not prohibited from testifying in front of the Board in support of Wal-Mart’s application.

The court explained that “[a]ny alleged conflict of interest by a present or former local government officer or employee is now governed by the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to -22.5.” The only subsection imposing restriction upon former government officers or employees was § 40A:9-22.5(b), said the court. That section prohibited former members of independent local authorities from representing or appearing on behalf of any other party before that authority for one year subsequent to termination of office of the member.

The court found this subsection did not prohibit Schectel from appearing as a witness before the Board. Even if the planning board was

The Background/Facts: William P. Johnson (“Johnson”) was a developer. In August 2005, Johnson acquired “Lot 38” in the town. Lot 38 consisted of 21,867 square feet of land, or about one-half acre. Lot 38 was located in a zoning district that allowed single-family residential uses as of right on a minimum lot size of 43,560 square feet, or about one acre.

Lot 38 had historically been part of a larger parcel (25,770 square feet in area) made up of several lots held in common ownership. That larger lot had been recorded in an 1876 plan with the registry of deeds. The larger parcel had complied with the applicable dimensional requirements of the zoning by-law until 1965. At that time, it then became subject to the one-acre minimum requirement. Under Massachusetts statutory law—G.L. c. 40A, § 6, 4th paragraph—the larger lot (now nonconforming) was grandfathered from application of increased zoning restrictions (i.e., the new one-acre minimum requirement) from “the time of recording or endorsement”—which was 1876.

In 1971, the town took by eminent domain a portion of this larger parcel. That taking left Lot 38 totaling 21,867 square feet.

In 2005, Johnson sought to construct a single-family residence on Lot 38. He applied to the town for a building permit. He maintained that Lot 38 qualified for grandfather protection under G.L. c. 40 A, § 6. He contended that this allowed him to build on the lot despite its nonconformance with the one-acre minimum requirement.

The building inspector denied the permit on several grounds. Among other things, she found that Lot 38 did not qualify for grandfather protection under G.L. c. 40A, § 6. Lot 38 therefore was nonconforming. Johnson could build on it only if he obtained exemption, special permit, or variance.

Johnson appealed the denial of the building permit to the town’s board of appeals (the “Board”). In August 2005, Johnson also applied to the Board for a variance and a special permit to allow a single-family residence on the property. The Board upheld the denial of the building permit. It also declined to issue a variance or special permit.

Johnson appealed.

The land court judge concluded that, in this case, the grandfathered status of the original larger parcel “did not carry over to the lot that remained after the taking.”

Johnson appealed.

DECISION: Affirmed.

The Appeals Court of Massachusetts agreed with the land court judge. It held that “the portion of non-conforming property [(i.e., Lot 38)] that remained after taking was not exempt from existing zoning restrictions” by a statutory grandfather status.

protecting Westport's waterways"; and "will result in substantial changes to residential property zoning in the AA and AAA zones and specify how much a particular property may be 'covered' with buildings, structures, parking spaces, patios and other impervious surfaces such as tennis courts." Among other things, the "amendment caps the ability of homeowners in AA and AAA zones to build homes larger than 15 percent of the total size of their properties."

Source: *Minuteman News Center*; www.minutemannewscenter.com

MARYLAND

In January or February, the Howard County Council is expected to vote on proposed zoning regulations which would allow apiaries—clusters of beehives. The regulations would "reduce the minimum length apiaries must be placed from neighboring properties from 200 feet to 25 feet, and 10 feet if the hive is surrounded by a fence, hedge or a structure that forces bees to fly higher than they otherwise would." Reportedly, the county's planning board recommended against adoption of the zoning amendment and suggests at least a 75-foot setback for apiaries.

Source: *Columbia Flier*; www.explorehoward.com

MICHIGAN

A new version of a medical marijuana zoning ordinance is being considered by the Dearborn Heights Planning Commission. This new version would ban medical marijuana dispensaries. The city council directed the drafting of this version—which prohibits land use contrary to federal, state, and local laws. State law allows marijuana possession and use by authorized patients and caregivers. However, federal law classifies marijuana as a prohibited drug and prohibits businesses from manufacturing or distributing controlled substances.

Source: *Dearborn Press and Guide*; www.pressandguide.com

NEW JERSEY

The New Jersey Assembly has approved legislation that would amend the state's Fair Housing Act and eliminate the state's Council on Affordable Housing ("COAH"). The bill is expected to pass the state senate. However, Governor Chris Christie is reportedly expected to veto the legislation "for not going far enough to reduce municipalities' often costly housing burdens."

Source: *Burlington County Times*; www.phillyburbs.com

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based on a zoning ordinance—Ordinance 2836—that prohibited the use of a senior-living facility.

Parvati and Bethlehem then filed suit against the city, the Zoning Commission, and certain city officials (collectively, the “City”). The suit asked the court to reverse the Zoning Commission’s decision under state-law administrative review. It also sought monetary damages under constitutional and statutory claims. Because of the constitutional claims (equal protection and due process under the 14th Amendment to the United States Constitution), the case was removed to federal court.

The federal district court affirmed the Zoning Commission’s decision. It dismissed the state-law administrative review claim. Parvati and Bethlehem then moved for voluntary dismissal of the constitutional and statutory claims. That dismissal was granted and the case was terminated.

In July 2008, Parvati (alone) moved for postjudgment relief. It alleged that the City had misrepresented the validity of Ordinance 2836. Parvati maintained that proper legal procedures were not followed when Ordinance 2836 was enacted. Parvati asked the court to vacate the earlier order and to reevaluate the Zoning Commission’s decision under the ordinance that existed prior to Ordinance 2836.

The district court ultimately reaffirmed its original order, upholding the Zoning Commission’s decision.

Parvati appealed.

The City maintained that Parvati’s appeal failed because Parvati now lacked standing to reopen the administrative-review claim. Parvati had transferred ownership of the property to its mortgage lender a few months earlier in order to resolve foreclosure proceedings.

DECISION: Vacated; matter remanded with instructions to dismiss Parvati’s motions.

Agreeing with the City, the United States Court of Appeals, Seventh Circuit, held that Parvati’s claims failed. The court said this was because Parvati lost standing to challenge the Zoning Commission’s decision when it conveyed the property to its mortgage lender.

The court explained that it could only hear the case if Parvati had standing. Standing required: (1) an injury in fact; (2) fairly traceable to the defendant’s (i.e., here, the City) action; and (3) capable of being redressed by a favorable decision from the court. Also, emphasized the court, “standing must be present at all stages of the litigation, including on appeal.” The relief Parvati sought—a decision vacating the district court’s earlier order and reversing the Zoning Commission’s decision—was a remedy that could benefit only the property owner. Since Parvati no longer owned the property, it lacked standing to challenge the Zoning Commission’s decision.

development district. At the meeting, the PZC discussed the number of units that the PZC would approve. In doing so, PZC members sought information from Anthony Panico, the town's planning consultant. Panico informed the PZC that, after PZC staff had pointed out "geometric spacing problems" to the Farrells, the Farrells had suggested removing one of the units. This brought the number of units down to six (from the seven originally proposed), "thereby addressing a number of other issues." Upon request from the PZC Commissioner, Panico showed the PZC the Farrells' revised "site plan for six [units]." Following a discussion, the PZC then approved the Farrells' district application with six units.

Neighboring property owners, the Buddington Park Condominium Association and individual unit owners (collectively, the "Association"), appealed the PZC's decision. Among other things, the Association maintained that the information Panico presented at the February meeting amounted to improper ex parte communications after the public hearing was closed. The Association complained that the Farrells' revised plan (eliminating one of the units) was not available for public comment and/or cross-examination at the public hearing by those opposed to the Farrells' proposed planned development district. The Association said this denied it due process. The Association further contended that it was prejudiced by this improper receipt of ex parte communications. It noted that the PZC may have denied the Farrells' application for a seven unit district.

The Farrells disagreed. They argued that the PZC did not receive an ex parte communication because Panico, the PZC's consultant, provided the information.

The superior court found in favor of the PZC. It dismissed the appeal.

The Association again appealed.

DECISION: Reversed; matter remanded with directions to sustain the Association's appeal.

The Appellate Court of Connecticut agreed with the Association. It held that the PZC improperly received ex parte information when Panico, the PZC's consultant, presented the PZC with the Farrells' revised site plan. The court also held that the Association was prejudiced by this improper ex parte communication.

The court explained that "planning and zoning commissions are entitled to technical and professional assistance in matters that are beyond their expertise, and that such assistance may be rendered in executive session" However, the court said that "[t]he use of such assistance ... cannot be extended to the receipt of ex parte, of information supplied by a party to the controversy without affording his opposition an opportunity to know of the information to offer evidence in explanation or rebuttal." Here, the court found that the information which Panico supplied to the PZC, and which the PZC considered in approving the

2006, BPG filed with the township's planning board (the "Board") an application for preliminary site plan approval. BPG proposed construction of eight buildings, as well as other improvements, on its property.

On May 29, 2008, the Board approved BPG's preliminary site plan.

On September 27, 2008, BPG caused to be published in a daily newspaper, notice of the site plan approval.

On October 2, 2008, the Board republished notice of the site plan approval in another, weekly newspaper.

In October, Sheila Fields, a member of Hopewell Valley Citizens' Group, Inc. ("Citizens"), inquired with the Board as to "when and where the Notice of Decision had been published to calculate the time for filing an appeal." The Board's secretary informed Fields that notice had been published on October 2, 2008.

Fields then calculated the 45-day period within which to appeal the Board's approval of BPG's site plan. New Jersey Court Rules, Rule 4:69 requires appeals from planning board decisions be brought within "45 days from publication of a notice once in the official newspaper of the municipality or a newspaper of general circulation in the municipality"

On November 17, 2008, Citizens filed in court a complaint against BPG and the township, challenging the site plan approval.

BPG and the township urged the court to dismiss the case. Among other things, they argued that Citizens' complaint was "untimely." The complaint had been filed within 45 days of the date the Board caused notice of the site plan approval to be published. However, it had been filed more than 45 days after the first publication—when BPG caused notice of the site plan approval to be published.

Citizens argued that the representation of the date of publication made by the Board's Secretary "justified enlargement of the limitations period." Rule 4:69-6(c) provided that: "The court may enlarge the period of time [to appeal local land use decisions] where it is manifest that the interest of justice so requires."

The trial court disagreed with Citizens, as did the Appellate Division.

Citizens again appealed.

DECISION: Reversed. Matter remanded.

The Supreme Court of New Jersey held that Citizens was entitled to an extension of the deadline to file the appeal. The court held that "the circumstances presented in this case satisf[ied] the standards in Rule 4:69-6(c) and warrant[ed] enlargement of the forty-five day period because 'it is manifest that the interest of justice so requires.'"

The court interpreted Rule 4:69-6(c) as allowing it discretion to enlarge a timeframe for filing an appeal of a local land use decision when the court "perceives a clear potential for injustice." The court found the

LOUISIANA (12/22/10)—This case addressed the ability of a department director to delegate authority to an employee to approve permits.

The Background/Facts: In September 2008, AHEPA 133/Penelope 55, Inc. (“AHEPA”) applied for a building permit with the city’s Department of Safety and Permits (the “Department”). AHEPA sought the permit for the construction of “Senior Independent Living Apartments (Multi-Family)”. The permit was issued on May 19, 2009.

Thereafter, AHEPA made a “minor modification” to the construction plans, which “affected the building footprint.” Because the modification affected most of the related documents, AHEPA submitted “revised plans” for approval by the Department. The Department’s Chief Plan Examiner approved the revised plans on July 20, 2009.

AHEPA commenced work on the project in the first week of February 2010.

On February 19, 2010, Robert Asaro, who owned property adjacent to AHEPA’s property, filed in court a petition for preliminary and permanent injunction. Asaro alleged that AHEPA’s permit had expired. The city’s zoning code provided that a building permit expired within six months after its issuance if construction had not commenced and no request for extension had been filed prior to such date.

AHEPA maintained that the building permit had not expired. Paul May, Director of the Department, testified that the six-month period for AHEPA to commence construction started over on August 21, 2009—when the Department released the letter authorizing the revised plans. AHEPA noted that because work commenced on the construction of the project in the first week of February 2010, six months had not elapsed between the issuance of the approval letter and the commencement of construction.

Eventually, the trial court granted Asaro’s petition for preliminary injunction. Among other things, it found that: the approval of the plan revisions was invalid because the Director of the Department did not personally sign the approval. The city’s building code required the Director’s “written assent ... be obtained before [plan revisions] be made.” The court “essentially found that the Building Code’s requirement of the Director’s written assent of the approval of plan revisions [could not] be delegated to other employees within his department.” The August 21, 2009, approval of AHEPA’s plan revisions issued from the Department’s chief plan examiner, not the director. Having found the approval of the plan revisions was invalid, the court concluded that the time to commence construction had expired before AHEPA began construction.

AHEPA appealed.

DECISION: Reversed. Injunction vacated.

MARYLAND

Prince George's County Executive Rushern L. Baker III (Democrat) plans to submit two proposed bills to the Maryland General Assembly. The first bill, "a campaign finance ethics package" would "close a loophole in state law that allows developers with pending zoning applications to contribute to slates"; and "prevent slates that include the county executive from receiving those contributions." The second bill would "limit the circumstances under which a Prince George's County Council member could call for a review of a developer's site plan." "State law already prevents developers from making these contributions to individual council members and the county executive. But Baker's proposal goes further by expanding the proposed prohibition on contributions to slates by developers with pending applications to also include the county executive."

Source: *Business Gazette*; www.gazette.net

MICHIGAN

The City of Royal Oaks is considering zoning amendments that would "allow film industry developers to open without first going to the Zoning Board of Appeals for approval."

Source: www.hometownlife.com

NEW JERSEY

State lawmakers recently approved legislation that would expand the powers of the Casino Reinvestment Development Authority ("CRDA"). If the legislation is signed into law by Governor Christie, the CRDA will have control over Atlantic City's Tourism District. Atlantic City Mayor Lorenzo Langford reportedly intends to "fight" "to protect the city's sovereignty," insisting "local officials must have a say over what parts of the city the zone will include" and referencing "concerns about the city's authority over planning and zoning."

Source: *Press of Atlantic City*; www.pressofatlanticcity.com

WASHINGTON

The State House of Representatives' Local Government Committee is considering House Bill 1013, which would "provide affected property owners written notice when a local government plans to change zoning classifications." The Committee is also considering House Bill 1012, which would "allow cities, counties and towns the ability to set terms of office for planning commissioners between six and four years."

Source: *The State Column*; www.thestatecolumn.com

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The Background/Facts: Manatee County (the "County") enacted Ordinance 05-21 (the "Ordinance"), which regulated the manner in which sexually oriented businesses operated in the County. The Ordinance contained both zoning and public nudity provisions. The zoning provisions included: physical requirements for the premises of sexually oriented businesses; restrictions on the hours of operations of such businesses; and a prohibition on serving of alcoholic beverages at such businesses.

In September 2005, three adult dancing establishments, which operated in the County, including Peek-a-Boo Lounge of Bradenton, Inc. ("Peek-a-Boo"), filed a lawsuit challenging the Ordinance. They maintained that the Ordinance was unconstitutional on its face as applied to them. More specifically, they argued that the Ordinance violated the First Amendment because it restricted their freedom of expression and was not designed to serve a substantial government interest.

The County defended the Ordinance. It said it had a "substantial interest in preventing and abating [negative] secondary effects [associated with sexually oriented businesses]." It rationalized adoption of the Ordinance as necessary to prevent those negative secondary effects and "to promote the health, safety, and general welfare of the citizens of the County" The County supported the adoption of the Ordinance with a "voluminous record that included judicial opinions; multiple secondary-effects reports, including land use studies and crime reports; affidavits from [local law enforcement]; newspaper articles; and other materials."

Finding there were no material issues of fact in dispute, and deciding the matter on the law alone, the district court issued final summary judgment in favor of the County. The district court held that the County's Ordinance "was reasonably designed to serve a substantial government interest—reducing the negative secondary effects associated with sexually oriented businesses."

Peek-a-Boo appealed. On appeal, Peek-a-Boo argued that the Ordinance was not "designed to serve a substantial government interest."

DECISION: Affirmed.

The United States Court of Appeals, Eleventh Circuit, agreed with the County and the district court. It concluded that the County's Ordinance was reasonably designed to serve a substantial government interest. The court found the County's rationale for adopting the Ordinance (i.e., to prevent and abate negative secondary effects associated with sexually oriented businesses) was supported by a substantial body of evidence.

The court explained that "[z]oning ordinances that regulate the conditions under which sexually oriented businesses may operate are evaluated as time, place, and manner regulations, following a three-part test set forth by the Supreme Court." Under that test, a court must: (1) first determine whether the ordinance amounts to a total ban (which is

See also: *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 111 S. Ct. 2456, 115 L. Ed. 2d 504 (1991).

See also: *California v. LaRue*, 409 U.S. 109, 93 S. Ct. 390, 34 L. Ed. 2d 342 (1972).

Case Note: In its decision, the court noted that “adult entertainment zoning ordinances and generally applicable public nudity ordinances ‘must be distinguished and evaluated separately.’” Zoning ordinances were constitutional and not in violation of the First Amendment if they survived the three-part test described in the decision. Content-neutral public nudity ordinances were constitutional if they met a different, four-part test: (1) whether the government acted within the bounds of its constitutional power in enacting the ordinance; (2) whether the ordinance furthers a substantial government interest; (3) whether the government interest is unrelated to the suppression of free expression; and (4) whether the ordinance restricts First Amendment freedoms no more than is essential to further the government’s interests. Here, the court found the County also met its burden under the second prong of that former test.

Repeal of Regulations—County Rescinds Conditional Commercial Zoning Designation of Portion of Landowner’s Land

Landowner says this rescission is an unconstitutional taking and deprives him of procedural due process

Citation: *Bettendorf v. St. Croix County*, 2011 WL 167030 (7th Cir. 2011)

The Seventh U.S. Circuit has jurisdiction over Illinois, Indiana, and Wisconsin.

SEVENTH U.S. CIRCUIT (WISCONSIN) (01/20/11)—This case involved the rescission of a commercial zoning designation of a portion of a landowner’s property, in response to a court order to do so. The case addressed the issue of whether that rescission of the zoning designation: (1) amounted to a government taking without just compensation; and (2) deprived the landowner of his procedural due process rights.

The Background/Facts: John Bettendorf owned property in St. Croix County (the “County”). When Bettendorf acquired the property, it was zoned agricultural-residential. In 1984, Bettendorf applied to the County Planning, Zoning, and Parks Committee (the “Committee”) for a rezone of a portion of his property to commercial so that he could operate a

the property “practically useless.” Accordingly, the court concluded that there was no compensable taking.

Addressing Bettendorf’s due process claims, the court acknowledged that the 14th Amendment protects against state action that deprives a person of property without due process of law. Bettendorf had argued that he was not afforded adequate procedural due process in the state court system. The court disagreed. It noted that, in order to prevail on his procedural due process claim, Bettendorf had to show that “he was deprived of a full and fair hearing to adjudicate his rights.” The court found that was not the case here. Rather, here: Bettendorf initiated state court review of the Ordinance; and he knew the County’s position on appeal was that the Ordinance was invalid in its entirety. Bettendorf had the opportunity to rebut that position before the court of appeals. In other words, Bettendorf was on notice that the Ordinance could be struck down and his commercial rights rescinded, and he had an opportunity to be heard on that issue before the court of appeals. Accordingly, the court concluded that Bettendorf’s procedural due process rights were not violated.

See also: *Concrete Pipe and Products of California, Inc. v. Construction Laborers Pension Trust for Southern California*, 508 U.S. 602, 113 S. Ct. 2264, 124 L. Ed. 2d 539, 16 *Employee Benefits Cas.* (BNA) 2265 (1993).

See also: *Parratt v. Taylor*, 451 U.S. 527, 101 S. Ct. 1908, 68 L. Ed. 2d 420 (1981) (overruled by, *Daniels v. Williams*, 474 U.S. 327, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986)).

Case Note: Bettendorf had also argued that the County’s rescission of the conditional commercial zoning designation violated his substantive due process rights. The court said that for that to be the case, the County would have had to have “exercise[d] its power without reasonable justification in a manner that ‘shocks the conscience.’” The court found that the County’s decision to revoke the commercial designation could “hardly be considered conscious-shocking or arbitrary.” The County was merely complying with a judgment from the court of appeals; its action was “utterly reasonable and not a violation of substantive due process,” concluded the court.

The court explained that the burden rested on TALP, the challenger of the fee, to show that the fee was unreasonable. TALP had to show that the fee did not bear a reasonable relationship to the cost of regulating the industry. In other words, TALP had to show that the fee was being used to raise revenue for general governmental purposes by either: (1) establishing that “the fee was enacted for the purpose of raising revenues for the general fund”; or (2) demonstrating that “the fee was unreasonable because it was disproportionate to the cost of the services rendered or to the ‘government’s costs of regulating and policing a business or activity.’”

Here, the inspection fee was enacted for a proper purpose: to compensate the City for the costs of conducting civil inspections. Thus, it was TALP’s burden to show the fee was unreasonable: TALP had to show that the City’s civil inspection revenues exceeded the City’s civil inspection expenses by an unreasonable amount. TALP failed to make that showing, found the court. Rather, the City’s five-year analysis showed that the City’s costs exceeded its revenues. TALP did not present any reliable evidence to dispute the City’s five-year costs/revenue analysis, nor did TALP show how application of a different fee would have led to a more reasonable result. Therefore, the court concluded that the fee was reasonable and thus was not unconstitutional.

See also: *Home Builders Ass’n v. City of North Logan*, 1999 UT 63, 983 P.2d 561 (Utah 1999).

See also: *Home Builders Ass’n of Utah v. City of American Fork*, 1999 UT 7, 973 P.2d 425 (Utah 1999).

Case Note: In its decision, the court also held that a multiyear analysis of costs/revenue in determining the reasonableness of an inspection fee is “an appropriate approach for analyzing whether a [municipality’s] costs exceed its revenues.” The rationale for such an approach, explained the court, is that: “a city’s disbursement for its regulatory expenses ‘may so vary from time to time that the surplus of one year may be needed to supply the deficiency of another.’”

Rezoning—Town Rezones Property to Commercial

Nearby residential residents say rezone is invalid because it conflicts with comprehensive plan

Citation: *Ferraro v. Town Bd. of Town of Amherst*, 79 A.D.3d 1691, 2010 WL 5395786 (4th Dep’t 2010)

Town had concluded that the proposed rezone was consistent with the Plan because of the Benderson Property's proximity to the University; the fact that Maple Road was a major arterial road; and the unlikely use of the Benderson Property for any other development based, in part, on its proximity to the sports arena and the University's stadium. The court agreed. It found that the Property was "in proximity to the University" and "close to the Plan's proposed location of a mixed-use center." Furthermore, the court noted that the Plan's proposed location of a mixed-use center was very similar to the layout of the Property: it was across the street from a residential area and buffered by a green area.

See also: *Bergstol v. Town of Monroe*, 15 A.D.3d 324, 790 N.Y.S.2d 460 (2d Dep't 2005).

Zoning News from Around the Nation

CALIFORNIA

The Foster City Council has "given preliminary approval to an ordinance" that would prohibit "any recreational or instructional school or business" such as "martial arts or dance studios, boxing gyms and fitness clubs" "from keeping their doors open during business hours." The proposed zoning change is in response to noise complaints.

Source: *San Mateo County Times*; 2011 WLNR 538360

LOUISIANA

The U.S. Department of Housing and Urban Development ("HUD") recently filed a complaint against St. Bernard Parish, alleging discriminatory zoning and housing ordinances. Critics have long alleged that the Parish ordinances are "racially discriminatory" and "designed to maintain the single-family residential character of the community." HUD has investigated Parish zoning ordinances (passed in December 2009) that eliminate any multifamily housing as a permitted use in five zoning areas (where that use was previously allowed). HUD says the ordinances have "created obstacles to those who want to provide and obtain affordable rental housing in the Parish, and that those obstacles discriminated in effect and intent based on race." One Parish councilman has said that the ordinances are not "against a group of people," but an attempt to protect property values.

Source: *New Orleans Times Picayune*; 2011 WLNR 1820888

MARYLAND

The state legislature is considering a bill that "would eliminate municipal authority to regulate county school construction." The bill "would subject county schools to the county planning process even when a fa-

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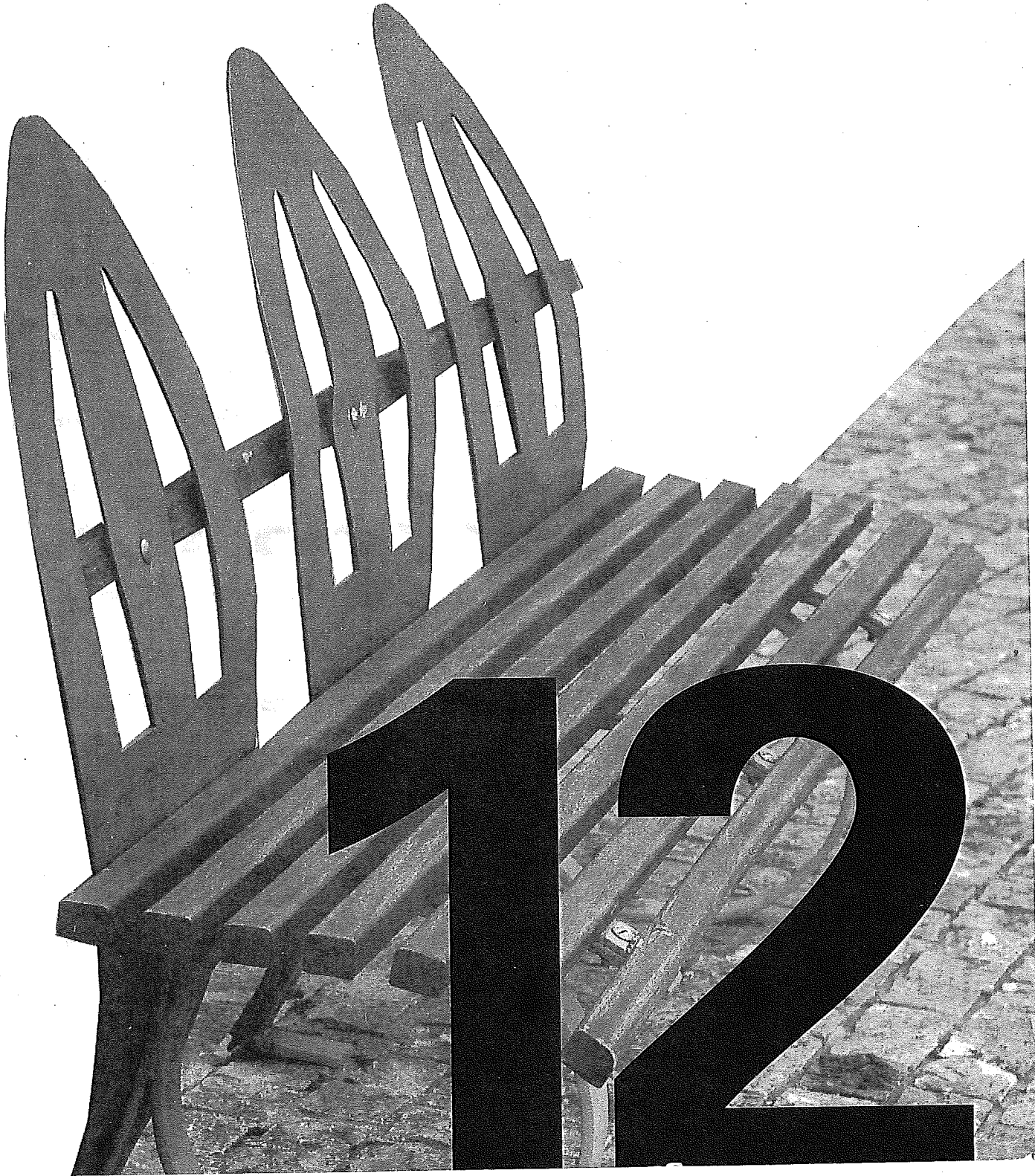
DECEMBER 2010



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PRACTICE COMMUNITY CHARACTER



ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of December to participate in our "Ask the Author" forum, an interactive feature of Zoning Practice. Bret C. Keast, AICP, will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and Zoning Practice will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of Zoning Practice at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA Zoning Practice web pages.

About the Author

Bret C. Keast, AICP, is president and owner of Kendig Keast Collaborative, a national planning firm with offices in Chicago; Sugar Land, Texas; Denver; Sturgeon Bay, Wisconsin; and Sacramento, California. Keast had more 20 years' experience with a regional planning commission, municipality, and international planning and design firm before forming his partnership with Lane Kendig in 2003. He has consulted local and county governments across the United States in the areas of comprehensive and small area planning, zoning and land development codes, and a broad array of other studies and master plans. Keast received his Bachelor of Science in Community and Regional Planning from Iowa State University and his Master of Urban Planning from the University of Kansas. He is a frequent speaker at national, state, and local planning conferences. He is co-author of *Community Character, Principles for Design and Planning* and *A Practical Guide to Planning for Community Character* (Island Press) and "Meeting Procedures and Liability Issues for Public Officials," published in the *Guide to Urban Planning in Texas Communities*. The author extends his appreciation to Lane Kendig, Gary Mitchell, Todd Messenger, and Elizabeth Austin for their help and contributions to this article.

delineated by design types. These types include urban core, urban, and auto-urban within the urban class; suburban and estate within the sub-urban class; and countryside, agricultural, and natural within the rural class. Of course, there will be variations among the design types depending on a multitude of factors including, but not limited to, topography, geology and soils, climatic conditions, and the context of the environment, together with the laws and common practices of different states and places.

Use of a community character system is essential if a community is to achieve intentional outcomes. While land use and density are considerations by way of their influences on traffic, parking, and utility capacity, they are poor surrogates for character. Instead, it is how the use is designed and density is applied that determines its character. By using community character to organize develop-

ment, better land-use and regulatory strategies may be formed and measures may be established to ensure deliberate outcomes.

The Premise

Simply, community character is rooted in the premise that the same or similar land uses may be designed to meet a number of different character types. This is done by using landscaping, street design, lotting patterns, and the arrangement and amount of open space—together with land use and density—to create the desired character. In each case, if designed in context, land use does not necessarily disrupt or even determine development character. While the focus of this article is on residential development, Illustrative 1 depicts a relevant application of community character in a nonresidential context. In this illustration, the use is the same but the character is much different by way of the building scale, position,

and orientation; provisions for parking; and its site design. In the same way, this use could also be designed to reflect a suburban character with increased open space and vegetation and different building and site standards.

Illustrative 2 on page 4 demonstrates that land use, lot size, and density are equally irrelevant as independent measures of character. The small-lot, single-family dwellings (left) are three times more dense than the detached single-family dwellings (right), yet the neighborhood shown on the left is perceived to be more rural in character. This goes against conventional wisdom to those (professionals and laypersons alike) who have been conditioned or unintentionally trained to think of increased density as being less desirable. Again, it is a multitude of design factors that relate to character.

Community character is based on a relative balance of design elements. This means that, within reason, development may have

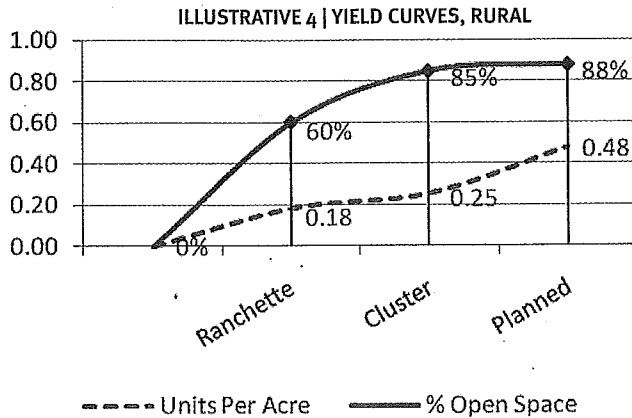
ILLUSTRATIVE 1 | SIMILAR USE, DIFFERENT CHARACTER:
Same use in urban and auto-urban settings (Valparaiso, Indiana)



© (Left) Drug store,
urban context

(Right) Drug store,
auto-urban context





⊗ A development with a combination of density and open space that falls anywhere along the yield curve is of a rural character.

The control measures are generally defined as follows (see Illustrative 5):

- **Green space** refers to pervious surfaces that may include common spaces, such as nature reserves, conservation areas, and parks or other open spaces. In the rural and sub-urban classes they also relate to private, on-lot green spaces. Green space also refers to green mass representing the relative volume of vegetation. In a sub-urban context, green mass should exceed building mass. In an urban context, green mass may “tip the scales” to a suburban character. In the community character system, green space is defined by an open space ratio or, for nonresidential uses, a landscape surface ratio.

- **Gray space** relates to the impervious area of a lot or tract, generally those consumed by parking and loading areas, as well as the building footprint. In relationship to character, the amount of on-site surface parking is a significant determinant, as is its relationship to the building and street(s).
- **Buildings** relate to both two and three-dimensional space. The amount of site area they consume and their relationship to other buildings, open spaces, and the street is among the factors that determine character. The height and mass of buildings are equally important as they relate to scale, building enclosure, and intensity.

Using Community Character

The dimensions and yields reflected below may be used to inventory and accurately categorize residential areas according to their character. By doing so, planners, public officials, and neighborhood leaders alike may better understand what elements produce a certain character. This may be used to develop a land-use plan that is more definitive as to the intended character outcomes of individual areas and the community. Ultimately, these dimensions and measures may be used to calibrate densities and open space percentages, establish dimensional standards, and determine yields in creating regulatory provisions that relate to character. Ordinances that fail to achieve their intended outcomes are due to an overemphasis on land use and lot size, a lack of emphasis on site and building design, use of uniform setbacks and lot dimensions across districts, and unrelated standards for resource protection, among many others.

Tipping Points

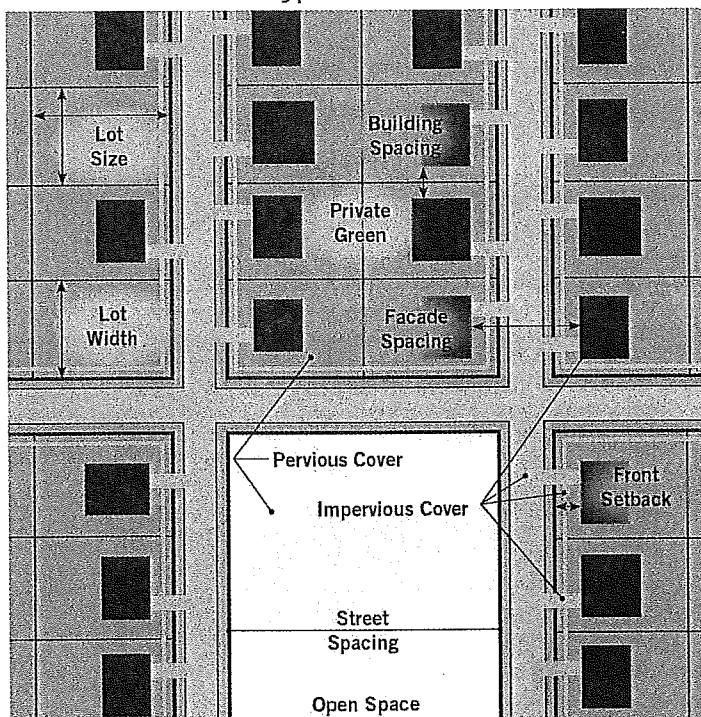
Sometimes character is not easy to categorize, particularly when a neighborhood was built according to standards that, at the time, did not relate to character. In this way community character is a tool to ensure that future neighborhoods have an identifiable character. Specifying character is also made difficult by unique site conditions that create tipping points. These are tangible and intangible variables that “tip the scales” from one character type to another. By way of example, what is an auto-urban neighborhood by reason of its street and lot layout and spacing may be classified suburban if there is significant open space; large, well-landscaped and treed front yards; and no garage or one situated to the rear or accessed via an alley. The most common tipping points include:

- Lot size and width, side yard setbacks, and building separation
- Front yard depth and amount of landscaping and green mass
- On- or off-street parking and front, rear, or alley-accessed garage
- Percentage and distribution of common open space

CHARACTER CLASS: RURAL

Natural and agricultural character types are defined by their uses: wooded or savannah lands, plus creeks and wetlands for the natural; crop and ranching, plus scattered, rural homesteads for the agricultural. Development within these areas is clearly accessory to the

ILLUSTRATIVE 5 | APPLICATION OF MEASURES



KEYS TO URBAN CHARACTER

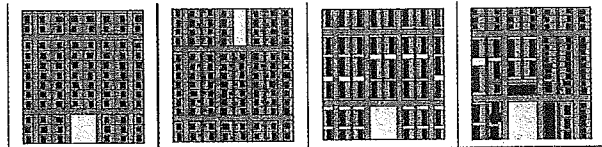
- Streets and other public spaces are framed by buildings
- Housing types range from small, narrower single-family lots dominated by driveways and front-loaded garages (auto-urban) to attached residential (e.g., brownstones, town houses) and multifamily dwellings with alley access or rear garages (urban). Yard and landscaped areas are reduced
- Higher lot coverage and floor area ratios leading to increased stormwater runoff
- Smaller front and side setbacks with a tighter building spacing
- Most conducive for pedestrian activity and interaction

CHARACTER CLASS: URBAN

There are three urban character types: auto-urban, urban, and urban core, each of which has increasing densities, heights, building coverage, and floor area, respectively, and less open space. Often, open space is in the form of civic squares, pocket parks, or urban plazas. The urban types are described as follows:

- **Auto-urban neighborhoods** are usually highly patterned and characterized by narrow—and often identical—lot widths with modest front yard setbacks, narrow side yard setbacks (meaning a tighter spacing of homes), and a high percentage of the lot devoted to driveways and on-lot parking. Depending on the width of lots, the location and visibility of garage doors and parked cars largely determines its character.
- **Urban neighborhoods** refer to those with smaller lots, setbacks, and building spacing, or those of attached or multiunit buildings with alley access or on-street or structured parking, all of which have an increased building coverage and floor area. Higher density buildings usually have a minimum of two or three stories.
- **Urban core** is reserved for intensive residential development including multistory or mid- and high-rise buildings. These may include vertical mixed use buildings with a mixture of commercial and residential uses. An urban core must have structured parking to achieve this character type.

Urban areas are characterized by the closeness of buildings, which encloses space—whether it is a street, alleyway, walkway, or public space. There is a strong relationship among and between buildings and the street, with an increased emphasis on building design and the



Means and Metrics	Auto-Urban	Urban (with alley)	Urban Attached	Urban Mixed Use
Green Spaces	Secondary	Secondary	Predominant (with buildings)	Predominant (with buildings)
Buildings	Secondary	Predominant	Secondary (with open space)	Significant, but secondary
Grey Spaces	Predominant	Significant, but secondary	Secondary	Secondary
% Open Space	20%	15%	25%	12%
Lot Size	7,500 sf	7,000 sf	2,500 sf. (per unit)	Mixed
Lot Width	75'	70'	25'	Mixed
Front Setback	30'	25'	20'	15' average
Building Spacing	14'	12'	20'	20'
Facade Spacing	110'	90'	100'	130'
Street Spacing	200'	200'	150'	160'
Impervious Cover	33.36%	40.78%	39.09%	62.93%
Pervious Cover	66.64%	59.22%	98.94%	37.07%
Private Green	46.64%	44.22%	50.12%	25.07%
Density, Gross	3.177	3.250	8.513	19.00
Density, Net	3.971	3.824	11.351	--

COMMUNITY CHARACTER AND THE COURTS

Glisson v. Alachua County, 558 So. 2d 1030 (Fla. Dist. Ct. App. 1990)

In this case the court held: "The interests purportedly protected by the regulations at issue in this case are appropriate subjects for exercise of the police power. For example, among the interests deemed legitimate for exercise of the state's police power are such matters as: (1) protection of aesthetic interests, . . . ; (2) preservation of residential or historical character of a neighborhood, . . . ; and (3) protection of environmentally sensitive areas and pollution control."

Nectow v. City of Cambridge, 277 U.S. 183 (1928)

In this case the court held that zoning provisions must bear "a substantial relation to the public health, safety, morals, or general welfare." That said, the Supreme Court has broadly construed the public welfare as: "The concept of the public welfare is broad and inclusive. . . . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974)

In this case the court held that a zoning ordinance will not violate equal protection if the law is reasonable and bears a rational relationship to a permissible state objective. Additionally, a zoning ordinance can withstand constitutional scrutiny upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest. (emphasis added)

pedestrian precinct. By nature of the uses and their relative intensity, urban areas are more connected and walkable. The difference between an auto-urban and urban character type, as illustrated above, is the handling of parking. An auto-urban type has a front-loaded garage, whereas the urban type is accessed via the alley. The lot size and open space is reduced to recover and slightly increase the density lost to the alley. Lots with on-street parking and alley access are typically urban in character, provided there is relatively high density and building cover.

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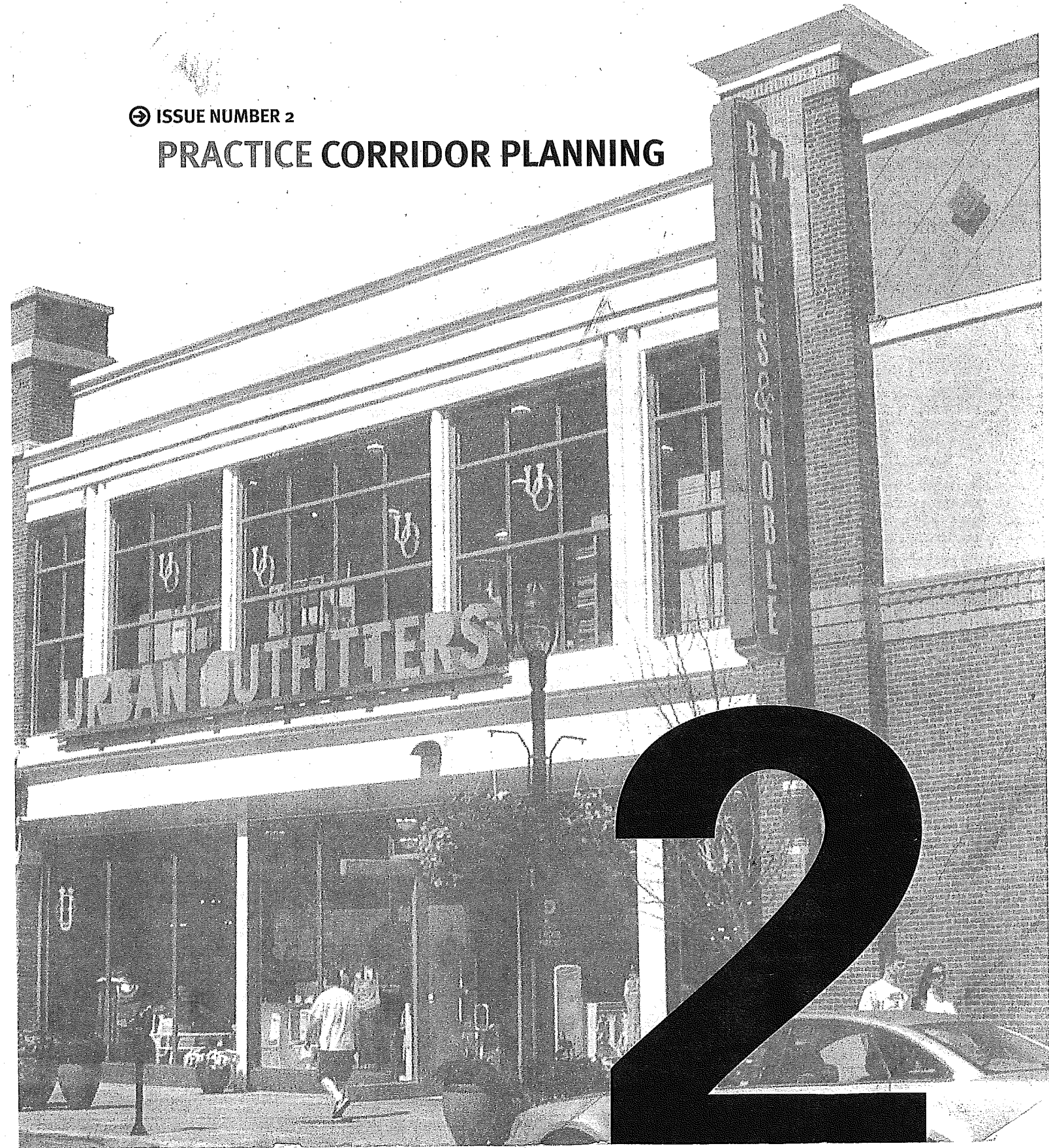
FEBRUARY 2011



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➔ ISSUE NUMBER 2

PRACTICE CORRIDOR PLANNING



ASK THE AUTHOR JOIN US ONLINE!

Go online during the month of February to participate in our "Ask the Author" forum, an interactive feature of *Zoning Practice*. David Dixon will be available to answer questions about this article. Go to the APA website at www.planning.org and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* web pages.

About the Author

David Dixon is the principal-in-charge of planning and urban design at Goody Clancy and a coauthor of *Urban Design for an Urban Century* (Wiley, 2009).

use, walkable environments. Real estate consultant Sarah Woodworth of W-ZHA, LLC, foresees little net new demand over the next decade for larger floorplate, suburban office buildings along arterial corridors. However, she identifies significant growing demand from emerging "creative industries" (technology, design, communications) in amenity-rich, walkable environments characteristic of more urban environments. In December, 2010, the *Wall Street Journal* reported that during the first three quarters of 2010, 16 million square feet of suburban office space became vacant, while downtown office vacancy remained essentially unchanged.

Increased Demand for Multifamily Housing
As recently as the 1970s roughly three-quarters of households in the housing market included children. Today, housing analyst Laurie Volk of Zimmerman/Volk Associates reports that half to two-thirds of all households in most regions are singles and couples, and urban qualities like nearby stores, sidewalks, a variety of housing options, and transit now rate highly in neighborhood-preference surveys. Urban economist Chris Nelson points out that America faces a growing shortage of multifamily housing in more urban settings while the stock of large-lot, single-family houses in 2010 already exceeds 2030 demand.

Feasibility and Density
Woodworth notes that owners of older strip developments often have little incentive to redevelop because their developments produce steady, predictable cash flow. As a rough rule of thumb, Woodworth and Nelson both estimate that tripling, or increasing even more, the existing density of strip development is often necessary to incentivize redevelopment. While premiums associated with higher density redevelopment once represented an obstacle, Chris Leinberger, a visiting fellow at the Brookings Institution,

reports that mixed use, walkable developments now claim a value premium of 30 to 50 percent over comparable single-use, auto-oriented development in many urban and suburban settings. Carol Coletta, who heads CEOs for Cities, reports that a survey of 24 major metropolitan areas indicates that values for comparable housing increases as walkability increases (as measured by the website www.walkscore.com).

Community Benefits of Corridor Redevelopment

In 2005, John Rahaim, then Seattle's planning director (now San Francisco's) estimated that because of demographic shifts the city of Seattle needed 35 percent more housing units to accommodate its 1960 population—and that while 80 percent of housing stock was single family, roughly half the demand was for multifamily housing. At the same time, the city lacked opportunities to accommodate new retail formats and "cool" office space. In many communities, low-density corridors represent the best opportunity to accommodate this demand, concentrate growth as an alternative to sprawl, and promote sustainability.

Higher value mixed use developments produce distinct fiscal benefits. A study for Asheville, North Carolina, by Joe Minacozi, the new products director of Public Interest Projects, Inc., found that Asheville's higher density, mixed use redevelopment produced roughly six times more revenue per acre than auto-oriented strips. Goody Clancy planners hear about other advantages. A walkable main street is the top aspiration for many urban and suburban residents—to enhance neighborhood character, provide walk-to amenities, and offer healthier lifestyles. Human resource directors say they have an easier time recruiting educated, skilled employees to walkable, amenity-rich environments—an observation supported by CEOs for Cities research.

CASE STUDIES

There are many models for transforming arterial corridors. In Opa-locka, Florida, a depressed city just outside Miami, the Opa-locka Community Development Corporation has launched a community-based planning initiative to revitalize the Ali Baba Road corridor—now dominated by auto-repair shops—that is attracting significant federal investment. Prince George's County, Maryland, is completing plans to transform an anonymous stretch of Annapolis Road outside of Washington, D.C., into a transit-oriented district. A proposal in New Orleans's new Master Plan to remove an elevated expressway and restore the Claiborne Corridor adjacent to downtown is gaining popular support.

These and the three case studies below (located in urban Columbus, Ohio, mature suburbs at the edge of Atlanta, and rapidly growing, suburban Dublin, Ohio) draw on the author's direct experience. The case-study corridors offer lessons more readily transferable to other communities. They do not depend on federal dollars, major transit investment, or a citywide campaign. Instead they illustrate how three communities used market-driven strategies to redevelop arterial corridors to reap significant community benefits.

While contexts differ, transforming these corridors involved planning and urban design objectives that are applicable to many arterial corridors:

- Sufficient density to transform auto-oriented environments into walkable ones
- Replacing automobile-scaled corridors with defined walkable centers and street grids designed and scaled for pedestrians
- A lively public realm lined with retail or other activities that invite pedestrian use
- A mix of uses that take advantage of multiple markets and contribute to vitality
- Connectivity in terms of physical connections and uses valued by the larger community

Transportation. Strategies focused on managing impacts on adjacent neighborhoods; securing city support for reduced parking ratios, shared parking, and curbside parking to support retail and buffer pedestrians from traffic; and preserving the opportunity to introduce streetcars.

Management. The plan recommended that Campus Partners undertake the necessary analysis, prepare a business plan, and work with property owners to form a business improvement district.

Results to Date

More than \$275 million has been invested in South Campus Gateway and elsewhere along High Street, and more than \$150 million has been invested in mixed income housing, a new police station, a public elementary school, and an OSU early-childhood learning center.

The Campus Partner's University District Revitalization project received the American Planning Association's 2010 National Planning Excellence Award for Implementation in addition to awards from APA Ohio and the Society for College and University Planning.

CLIFTON CORRIDOR: CENTER FOR A VIBRANT COMMUNITY

Outside of Atlanta, a series of Native American pathways evolved into rural roads serving agricultural villages. In the late 19th century a founder of Coca-Cola developed an Olmsted-designed garden suburb, Druid Hills, and opened the area for development. By 1950 the Clifton Corridor was lined with verdant suburbs and bucolic campuses. By the 1980s the corridor was indistinguishable from other strip-development corridors.

Context

The Clifton Corridor consists of a series of connected arterial highways—Clifton Road, North Decatur Road, and Clairmont Road—which are constantly congested and not served by rail transit. It has some of America's highest pedestrian fatality rates and faces deteriorating air and water quality. Concerned that the corridor's auto-oriented setting would not appeal to the next generation of students, faculty, staff, and researchers—and eager to contribute to sustainable smart growth—Emory University reached out to nearby neighborhoods to form the Clifton Community Partnership in 2006. In 2008 the CCP published the Clifton Corridor Urban Design Guidelines—a vision and strategies for transforming the corridor “from a mid-20th-century automobile-centered suburb into a 21st-century walkable community,”

preserving the character of existing suburban neighborhoods, and restoring the degraded natural environment.

Development program

The preferred vision included approximately 10 million square feet of mixed use development. Community members requested multifamily housing options that enable younger people to move into the neighborhood and older residents to remain.

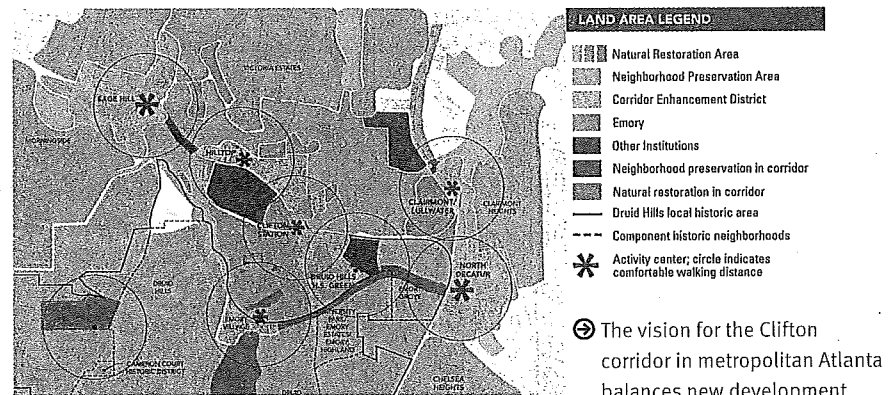
Planning framework

The guidelines called for the transformation of strip retail and shopping centers into 10 distinct character areas including five “activity centers” that form the vibrant heart of a community seeking to manage growth.

a vision, principles, development goals, public- and private-realm design guidelines, and conceptual plans and illustrative before-and-after studies.

Zoning. The DeKalb County comprehensive plan identifies policy goals for defined town centers, including walkability, buildings that frame streets with pedestrian-friendly uses, a “high-density mix of retail, office, services, and employment uses” in a compact center, and reduced dependence on autos. The guidelines provide specific direction for achieving these goals in each character zone and require new development to restore nearby degraded natural environments.

Partnerships. Emory formed a partnership to create the first redevelopment—an amenity-rich, mixed use development that



(“enhancement districts”—including five activity centers) with preserving existing neighborhoods and restoring natural areas.

Implementation

The CCP lacks the funding and staffing that empower Campus Partners, but it has brought Emory and the community together around a single agenda to influence public policy and private investment. Key strategies include the following:

Education. Druid Hills has long found itself at odds with Emory. The CCP represents a conscious effort to bridge this divide. Initially skeptical, residents found that both sides aspired to walkable, mixed use environments. The guidelines represent a “social compact” that documents agreements on uses, character, and scale of development along the corridor.

Market. Participants and decision makers had confidence that Atlanta's closer-in suburbs face strong growth pressures. DeKalb County is expected to add 200,000 people (and roughly 75,000 housing units) by 2025.

Design and design review. The guidelines divide the corridor into 10 distinct character zones and provide for each one

includes 800 units of housing for faculty and staff within a five-minute walk of campus.

Transportation. Initial traffic concerns turned to support after a transportation study reported that mixed use developments generate roughly 44 percent less traffic than conventional strip development, noted that reducing lane width to accommodate bike lanes slowed travel speeds, demonstrated that traffic associated with community-oriented redevelopment displaced through-traffic to regional highways, and indicated that curbside parking and street trees (discouraged by Georgia DOT) could work along this heavily traveled corridor.

Management. The CCP will maintain ongoing responsibility as an advocate, convener, and sponsor for corridor initiatives. It has also set up a communitywide information network.

Results to date

The \$250 million Emory-sponsored mixed use “Emory Point” LEED-ND development received zoning approval. DeKalb County

PLANNING AND URBAN DESIGN OBJECTIVES	HIGH STREET	CLIFTON CORRIDOR	BRIDGE STREET CORRIDOR
<p>Densities that support walkability</p> <ul style="list-style-type: none"> • Net densities of 40 to 60 housing units per acre and corresponding commercial FARs of 1.5 to 2.5 (threshold supports informal interaction, casual trips on foot) • Densities achieved using three- to five-story buildings (familiar scale, continuity to nearby neighborhoods, and avoiding high-rise cost premiums) • Shared parking strategies (enables increased densities on smaller lots and shared use for uses with different peak needs) 	<p>Tripled the retail and doubled the floor space lining High Street</p>	<p>Three activity nodes represent transit ready development opportunities</p>	<p>Five- to tenfold increase over recently approved auto-dependent development densities</p>
<p>Defined walkable centers and street grids scaled to pedestrians</p> <ul style="list-style-type: none"> • One to four distinct centers created along each corridor—sized for a maximum 10-minute walk (half-mile) and connected by higher density, walkable redevelopment along arterial roads • Maximum block size in centers 300 to 400 ft. 	<p>Streets connecting to neighborhoods reopened—traffic management to avoid impacts</p>	<p>Two large shopping centers subdivided into more than 30 blocks—including square and parks</p>	<p>Street grid subdivided larger sites but avoided fragmenting small sites. Some blocks structured parking lined by housing (roughly 200- to 300-ft. width plus sidewalks)</p>
<p>A public realm that invites walkability</p> <ul style="list-style-type: none"> • Retail or other "active" uses (artist studios, community spaces, lifelong learning, entertainment, etc.) encouraged everywhere and mandated along "main streets" in centers • Town houses with street entries at street level for multifamily housing • Parking structures located behind buildings or lined with housing and retail facing streets 	<p>Active uses mandated facing High Street (no internal atriums); drive-through businesses add outdoor seating and pedestrian-scaled signage</p>	<p>Emory buildings and campus will engage, rather than step back from, adjacent community</p>	<p>Higher density, mixed use buildings announce the transition to pedestrian-oriented environment</p>
<p>A mix of uses that contributes to vitality</p> <ul style="list-style-type: none"> • Housing represents more than half of the mix (supports neighborhood-serving retail, day/night activity) • Cinemas, music, cafes, and similar amenities contribute to vitality attracts housing and office • Mix of uses responds to changing markets 	<p>Entertainment and arts created university-community character</p>	<p>New university bookstore is an integral to revitalizing an activity center</p>	<p>Mixed use, walk-to-work opportunities attract employees—and grow Dublin's employment base</p>
<p>Physical and social connectivity</p> <ul style="list-style-type: none"> • Street, bike, and pedestrian connections to adjacent neighborhoods • Lively public squares, cultural, and civic uses make redevelopment integral to the life of the larger community 	<p>Arts cinema, supermarket, mom-and-pop retailers engage different demographics; jobs program benefits nearby residents</p>	<p>Mixed use centers located within a 10- to 15-minute walk of every neighborhood</p>	<p>Scioto River reserved as a "central park"; city hall and central library relocated to new "town green"</p>
<p>Transitions to adjacent neighborhoods</p> <ul style="list-style-type: none"> • Building heights step down • Parking and other traffic generators located along busy streets 	<p>Reopened streets include neighborhood-oriented retail</p>	<p>Redevelopment preserves all residential blocks</p>	<p>Nearby subdivisions requested walkable connections to downtown</p>
<p>Planning and design that foster sustainability</p> <ul style="list-style-type: none"> • Projects framed as a smart growth initiatives • New zoning offers opportunity to create model green districts • Centers form potential eco-districts (enable buildings to share energy and graywater) 	<p>More than half redevelopment replaces surface parking</p>	<p>Emory/community partnership will maintain area's tree canopy, restore natural areas and streams, and manage stormwater</p>	<p>Primary focus for Dublin's new sustainability manager</p>

phased transportation improvements and develop a transit strategy.

Management. A team that includes leaders from all city agencies involved in corridor redevelopment meets weekly to coordinate city policy, investment, and other actions.

Results to date

Two major landowners—a 50-acre failed shopping center and 75-acre nonprofit campus—have announced redevelopment plans totaling more than five million square feet. The nonprofit has selected Forest City as a master developer.

CONCLUSIONS

As America moves out of the recent recession, arterial corridors represent a new frontier—an opportunity to invest in reinforcing existing communities rather than draining resources to peripheral greenfields. None of these transformative plans moved forward without strong leadership, a commitment to community-based planning, and a willingness to explore innovative approaches to implementation that broke with familiar practices. These are resources that many communities already possess or can develop. The case study corridors demonstrate how many communities can tap growing markets to generate significant economic, social, and environmental benefits.

The 75-acre Crocker Park mixed use development has given suburban Westlake, Ohio, a pedestrian-oriented town center where none existed before. ©Dan Tasman; design concept by Lisa Barton.

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Design and design review. Dublin has asked Goody Clancy to prepare a pattern book. The city is also developing a new design review and approvals process that places greater stress on a "district" approach that emphasizes continuity, interaction between buildings and the public realm, the role that design and programming both play in placemaking, and similar qualities that focus on the quality of both the district as a whole and individual buildings and public spaces.

Zoning. Clarion Associates, Farr Associates, and McBride Dale Clarion are preparing new zoning that mixes form-based and performance requirements with a strong focus on defining uses and design appropriate for main street, neighborhood, and other types of streets. Dublin intends to simplify

approvals by conveying intent as well as specific requirements for every part of the district. Where essential to achieve placemaking goals, the code will provide density incentives to aggregate fragmented ownerships.

Partnerships. Dublin will partner with developers to build, or fund, much of the shared infrastructure—street grids, parks, parking, a reconfigured highway interchange, bike paths, a "green stormwater system," and similar elements, and will recapture the costs of these investments through TIF and similar mechanisms.

Transportation. Nelson\Nygaard is preparing a district-transportation model that incorporates reduced trip-generation assumptions associated with mixed use development. The model will be used to identify