City of Ramsey Planning Commission Training

Presented By

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ECKBERG LAMMERS
ATTORNEYS AT LAW

AGENDA

Discussion Items

- City Administration
- Meetings (Open Meeting Law)
- Data Practices Act
- Conflicts of Interest
- Gift Law
- Municipal Planning
- Public Hearings

City Administration

- **Charter City**
  - Mayor/Council
  - City Administrator
  - 7 City Council members
  - Council hires and fires all personnel
  - Council has policy-making, administrative and legislative authority
  - Authority comes from statute AND the City Charter

City Administration

- The Council has the authority to:
  - Control City finances
  - Adopt ordinances (legislative)
  - Regulate certain activities/conduct (licensing)
  - Enter into contracts
  - Establish committees and direct matters to them
  - Set policies

Your Role On the Planning Commission

Planning Commission

The primary objective of the planning commission is to hold public hearings on land use applications from the zoning code, sign code, and subdivision code and to advise the city council on those land use applications and other land use concerns and other duties conferred upon it by this chapter or the city council. In addition, the planning commission shall serve as the planning agency and shall have the powers and duties given such agencies by Minn. Stats. §§ 462.351—462.364.

City Code Sec. 2-159

We need to hear from YOU

You were appointed to advise the Council on virtually all land use decisions for this town.

Unsure what to ask or discuss?

- Look in your agenda packet at the staff memos, find two or three questions to ask based on the memos.

THE OPEN MEETING LAW

Open Meeting Law
Minn. Stat. §13D.01

Meetings of the Council or any Commission or Committee must be open to the public.

"Meetings" are not defined in the Open Meeting Law, they are defined in case law:

A quorum of the body:

- Discusses, decides, or receives information as a group; and
- Information is related to official business.

Open Meeting Law

Regular Meetings

- Annual City Calendar is adopted that shows dates of all regular meetings
- Agendas are posted on website

Special Meetings

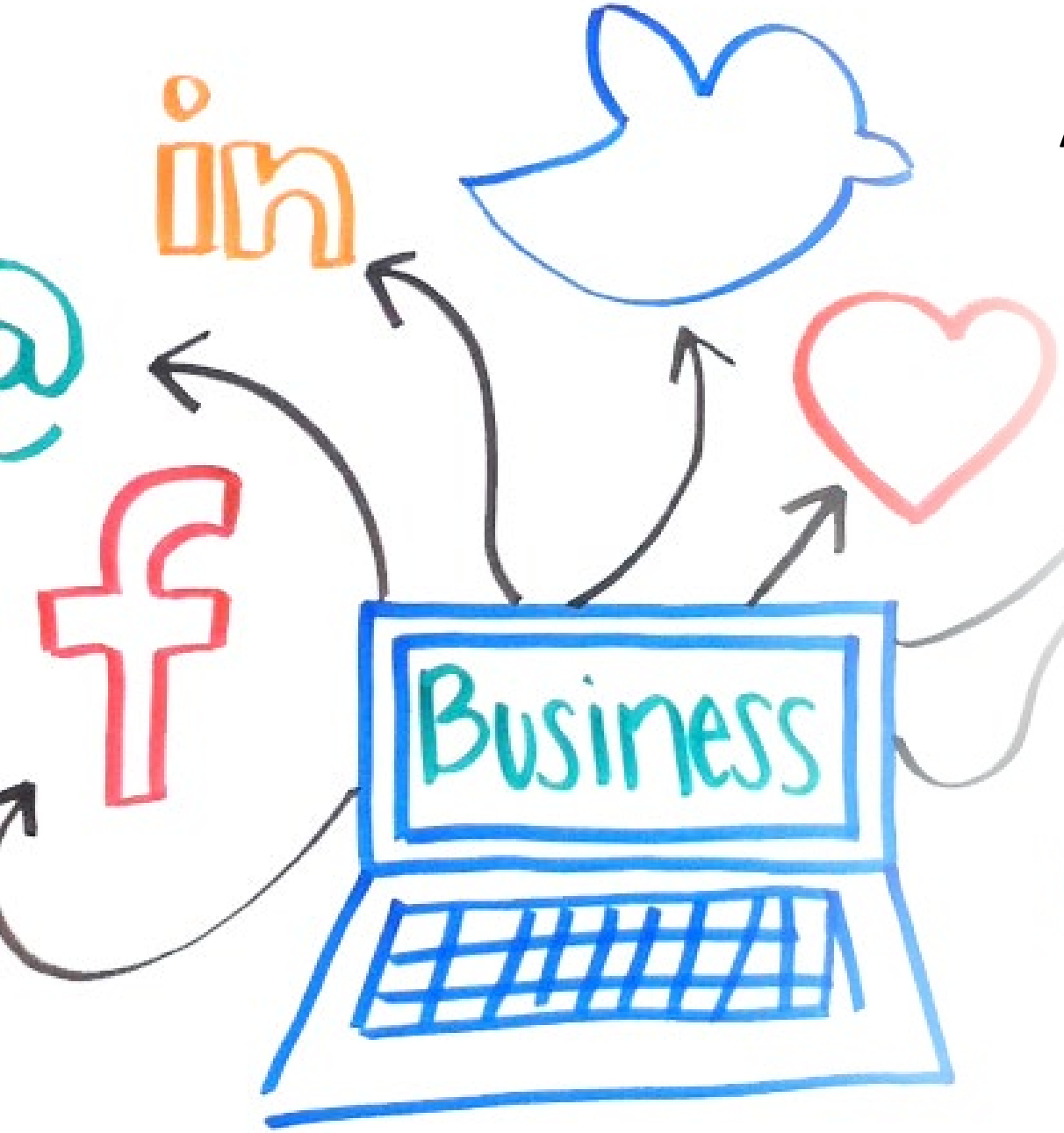
- At least 3 days' advanced notice is posted (website, bulletin board)
- Agenda must be posted with notice and **cannot deviate from the items noticed**

Emergency Meetings

- Something that requires immediate consideration by the public body.

OML – Interactive Technology

- Can use Interactive Technology if…
  - At least one person is in the regular meeting location
  - All members can see/hear all other members and can see/hear the discussion and testimony
  - The public at the regular meeting location can see/hear all members of the body
  - All votes are conducted by roll call
  - Need comply with notice requirements – please notify in advance or cannot use this tool (except for emergency meetings)



Accidental Meetings

- Serial Meetings
  - Series of meetings that eventually meet a quorum
- Email
  - Watch out for “reply all”
- Social Media
  - Is your page public or private?
  - Do you ever talk about City business?

Email should be used:

- To receive information from the City (one-way communication)
- Between 2 members of the Commission only, without forwarding or copying other members of the Commission

Social Media "Meetings"

You are violating the OML if:

- You are friends on FB with a quorum of your group of members; or
- You are followed on Twitter/Instagram by a quorum of your group of members; <u>and</u>
- You discuss, post, or opine about any official business that comes before the group

Open Meeting Law Exception: Minn. Stat. §13D.065:

The use of social media by members of a public body does not violate this chapter so long as the social media use is limited to exchanges with **all** members of the general public. For purposes of this section, email is not considered a type of social media.

OML Violations

<u>This is a PERSONAL LIABILITY</u>

Penalties:

- $300 for each occurrence & attorney's fees (up to $13,000)
- Removal from office for 3 or more violations
- Public humiliation

Data Practices Act

Minn. Stat. Ch. 13 *GENERAL RULE:*

All *data* is public unless it fits under an exception.

- **<u>Data:</u>** All data collected, created, received, maintained or disseminated by the City, regardless of its physical form, storage media or conditions of use.

    - Documents
    - Personal notes made during a meeting
    - Audio tapes
    - Video tapes
    - Computer storage media (CDs, external drives)
    - Emails
    - Computer hard-drives
    - Text messages
    - Twitter Accounts
    - Instant Messages
    - Cell phone records

Data Practices Act

If data is within your control or possession, and it is related to official business, it is subject to the Data Practices Act

Data Practices Act

All cities are required to have a Responsible Authority and a Compliance Officer to administer the Act.

When asked for data, refer all people to the Responsible Authority (City Clerk – Katie Schmidt). DO NOT provide the data yourself.

CONFLICTS OF INTEREST

Two Types of Conflicts of Interest

- Contractual: situation in which official has a personal financial interest in a contract, sale, lease (§471.87)

- Non-contractual: situation in which an official has a personal financial interest in a non-contractual decision: family connections, self-judgment.

Many exceptions to conflict of interest laws and rules (§471.88). Please reach out to me if you have any questions on this area.

Contractual Conflicts of Interest

Minn. Stat. 471.87

- You cannot have a *direct* or *indirect personal* or *financial* interest in *any matter* upon which you have the authority to make a decision. In your situation, you advise instead of make decisions, but you should still be mindful of these laws.
- Any contract made in violation of the conflict of interest law is void.
- The member is guilty of a gross misdemeanor.

Non-Contractual Conflicts of Interest

There are 5 Factors to consider:

1. The nature of the decision being made.
2. The nature of the financial interest.
3. The number of interested officials.
4. The need, if any, for the interested persons to make the decision.
5. Other means available.

Lenz v. Coon Creek Watershed District

Examples of Non-Contractual Situations

Improvement of Adjacent Creek – **No conflict**

Establishment of ditch that drained Commissioner's land – **Conflict**

Renewal of liquor license located next to Town Supervisor's land – **Conflict**

Church affiliation – **No Conflict**

Street Vacation – **Conflict**

Rezoning on your own property - **Conflict**

The Gift Law - Minn. Stat. 471.895

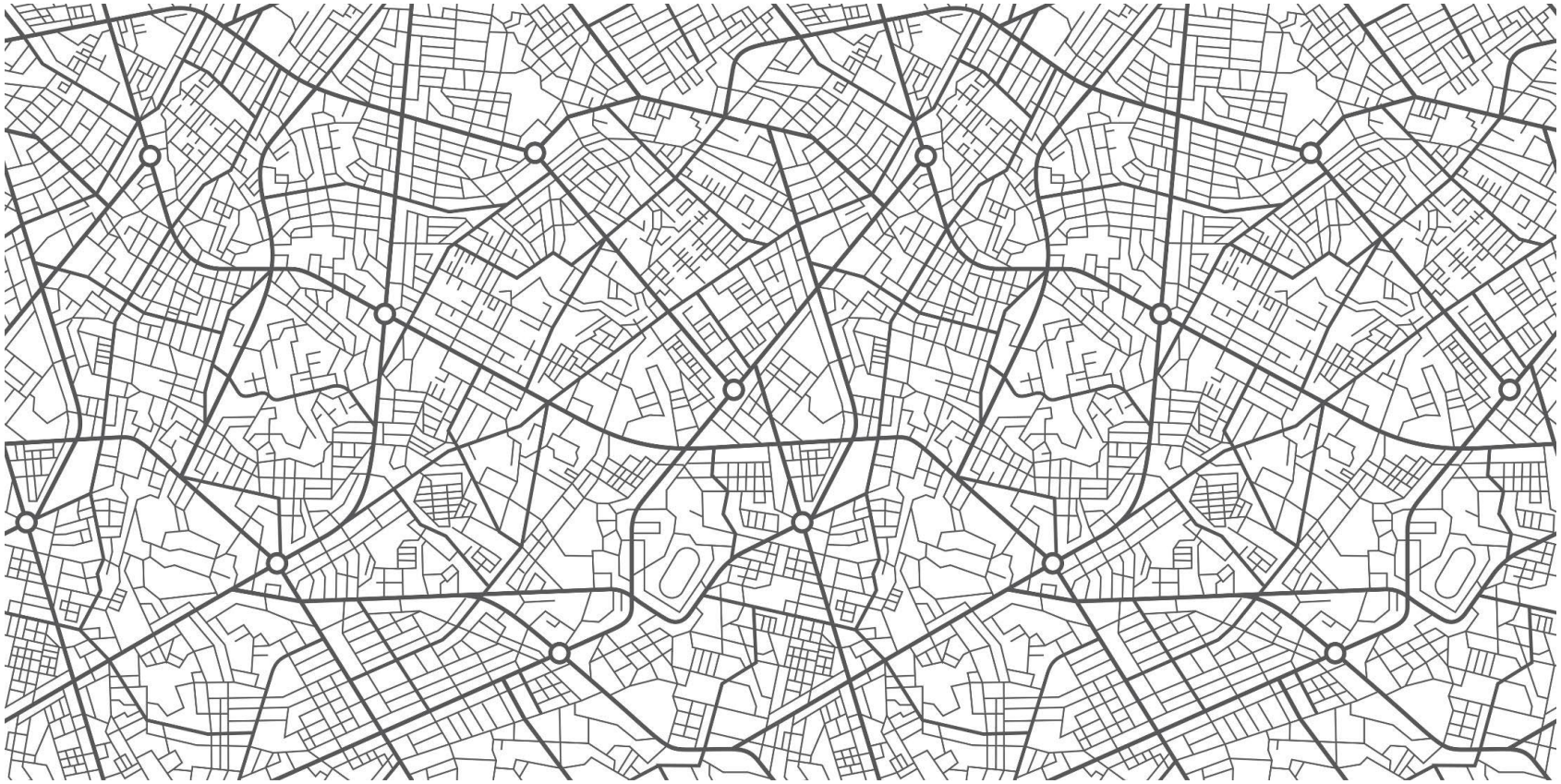
Local Officials cannot accept gifts from interested persons.

- Local Official = City or County elected or Appointed officer
- Gift = Money, personal property, real property, service, loan, forgiveness of debt
- Interested Person = Anyone living or doing business in the City who is or could be impacted by the decision

Gift Law - Exceptions

- Campaign contributions
- Plaque
- Trinket or item costing $5 or less
- Food or beverage at a reception or meeting where the City official is giving a speech or answering questions
- Gifts between family members

Municipal Planning



STATUTES

462.351 MUNICIPAL PLANNING AND DEVELOPMENT; POLICY STATEMENT.

The legislature finds that municipalities are faced with mounting problems in providing means of guiding future development of land so as to:

- Insure a safer, more pleasant and more economical environment for residential, commercial, industrial and public activities,
- Preserve agricultural and other open lands, and
- Promote the public health, safety, and general welfare.

… Municipal planning, by providing public guides to future municipal action, enables other public and private agencies to plan their activities in harmony with the municipality's plans.

STATUTES

462.354 ORGANIZATION FOR PLANNING.

A municipality may by charter or ordinance create a planning agency. …

It may consist of a planning commission... The planning commission may be provided with staff which may be a division of the administrative structure of the municipal government. The commission shall be advisory directly to the governing body.

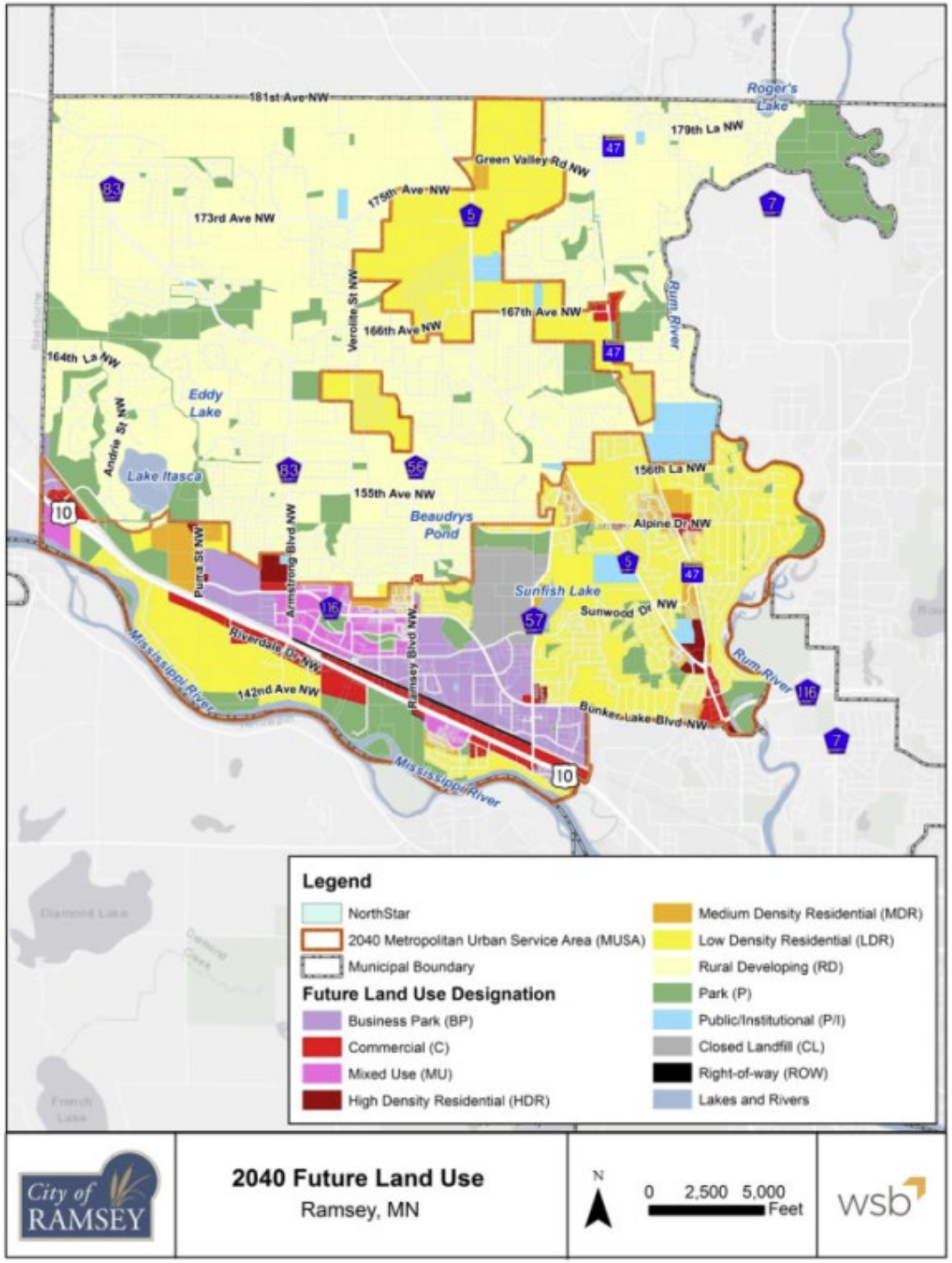
The Rule Books

- Comprehensive Plan
- Zoning Ordinance
- Subdivision Ordinance

Comprehensive Plan

- Guide for future development
- Strategic map to reach the vision of the City
- Broad brush
- Takes priority over other Rule Books

Land Use Map - 2040



Zoning Ordinance

462.357 OFFICIAL CONTROLS: ZONING ORDINANCE.

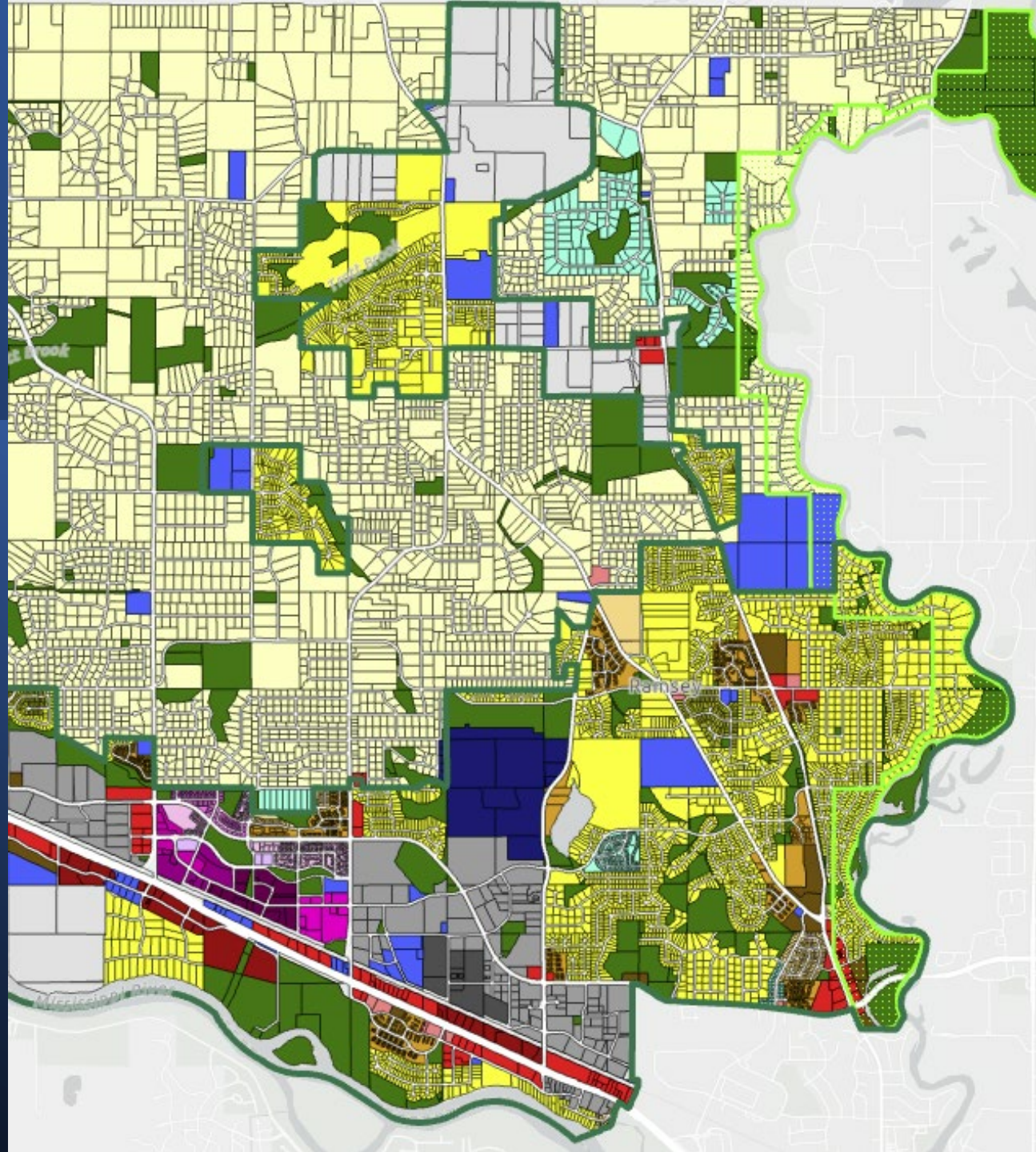
Subdivision 1. **Authority for zoning.**

For the purpose of promoting the public health, safety, morals, and general welfare, a municipality may by ordinance regulate on the earth's surface, in the air space above the surface, and in subsurface areas,…

Zoning Ordinance

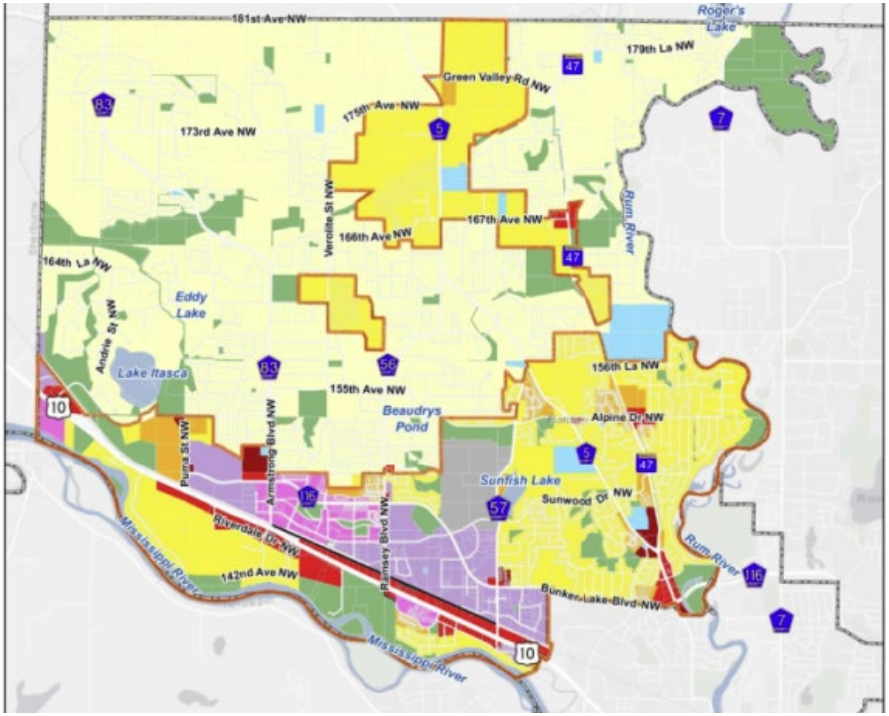
- the location, height, width, bulk, type of foundation
- number of stories
- size of buildings and other structures
- the percentage of lot which may be occupied
- the density and distribution of population
- the uses of buildings and structures for trade, industry, residence, recreation, public activities, or other purposes …

Zoning Map

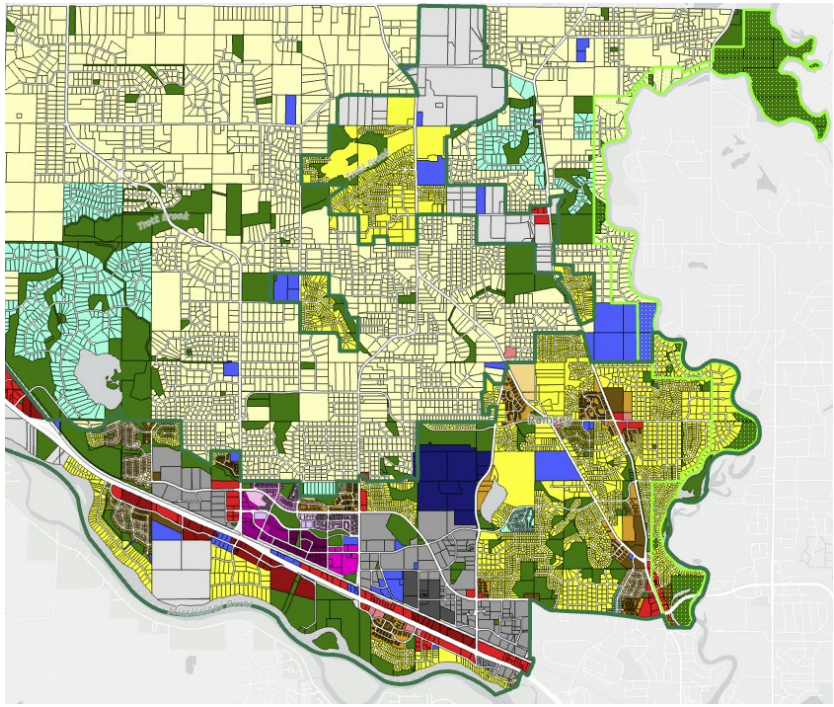


Comp. Plan Map vs. Zoning Map

Land Use Map



Zoning Map



Subdivision Regulations

462.358 OFFICIAL CONTROLS: SUBDIVISION REGULATION

Subd. 1 a. **Authority.**

- To protect and promote the public health, safety, and general welfare,
- to provide for the orderly, economic, and safe development of land,
- to preserve agricultural lands,
- to promote the availability of housing affordable to persons and families of all income levels, and
- to facilitate adequate provision for transportation, water, sewage, storm drainage, schools, parks, playgrounds, and other public services and facilities, …

Subdivision Regulations

Regulates:

- Lot sizes
- Streets
- Requirement for parks, sidewalks, trails
- Preservation of natural resources (park dedication fees)

Subdivision Regulations

- Ensures that new development and redevelopment meets standards for a safe, functional and enjoyable community
- More detailed requirements than Comp. Plan and Zoning Ordinance
- Minutia: public trails, parks, utilities, streets, boulevards, lighting, signs
- Written by Planners and Engineers

Subdivision Regulations

- Preliminary Plat approval (120 days)
  - General nature, design and scope of project
  - May add conditions such as:
    - Add sidewalks/trails
    - Require MNDOT review & approval
- Final Plat approval (60 days)

60-DAY RULE

60-Day Rule

General Rule: Failure of the decision-maker to act on a zoning application (CUP, variance, site plan, Final Plat) within 60 days after receipt of a completed application results in **automatic approval** of the request.

Note: City can extend for an additional 60-days with written notice to applicant.

PUBLIC HEARINGS

Public Hearings

What Kinds of Matters Require a Public Hearing?

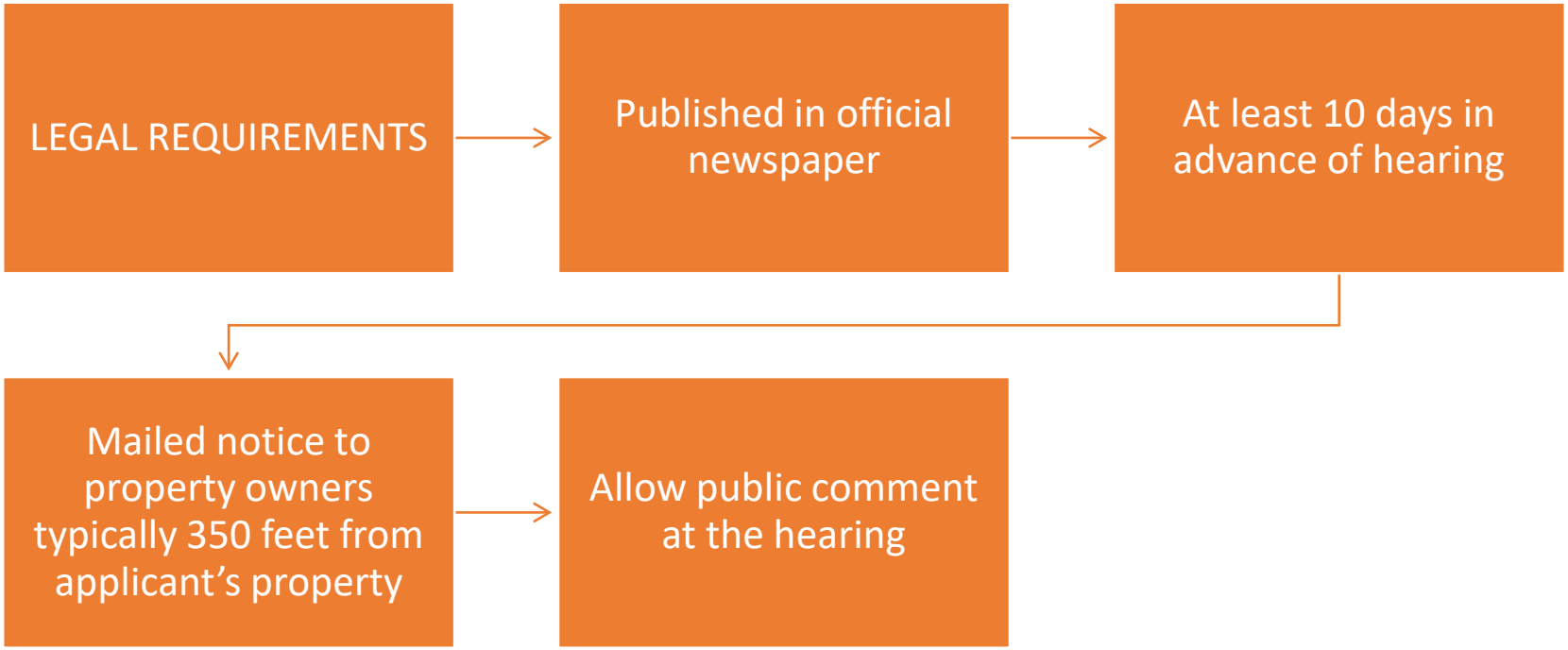
- Site Plan Review
- Preliminary and Final Plats
- Conditional Use Permits / Interim Use Permits
- Variances
- Zoning Text and Map Amendments
- Comp Plan Amendments
- Home Occupation Permits (Type II)
- Easement vacations

Public Hearings

Why is a <u>Public Hearing</u> Important?

- Provides "Due Process"
  - Notice to all interested parties, including the public.
  - Chance to be heard
- 14th Amendment to the US Constitution
- Art. 1 Section 7 of the MN Constitution

Public Hearings



Public Hearings

5 Appropriate Questions to ask at a PH:

- Is the existing parking lot size and number of stalls adequate for this new use?
- Is the landscape plan sufficient to screen the headlights from the neighboring residential property?
- Which entrance will your trucks use to access the loading dock?
- Is it possible to move the trash enclosure to a different part of the site?
- Have you done a traffic study?

Public Hearings

5 Inappropriate Questions to ask at a PH:

- Can you change your sign logo/colors?
- Do you use union labor to construct your buildings?
- Can you change the design of your building?
- Will you be recruiting employees who live in the community for your business?

Decision Time

Make a decision and adopt Findings of Fact that:

- Are necessary to support a decision.
- Apply the facts in the record to the standards set forth in the ordinance.
- Reasons why a request/permit should be granted or denied.

Hint: If you are going to follow Staff's recommendation, please say "For the reasons stated in the staff report, I motion to…"

Public Hearings

- *Valid Findings of Fact for Approving Applications*
  - Consistent with the Comprehensive Plan
  - Does not endanger, injure, detrimentally impact surrounding properties
  - Meets definition of “practical difficulties” when applicable (Variances)
  - Consistent with City Code requirements

Public Hearings

- *<u>Not</u> Valid Findings of Fact for Approving Applications*
  - Proposed use is better than what's there now
  - New use will increase the property taxes
  - I want to be nice
  - Owner can't sell property with current zoning
  - Owner already spent money assuming application would be approved
  - The building materials we require are too expensive

Public Hearings

- *Valid Findings of Fact for <u>Denying</u> Applications*
  - Not consistent with the Comprehensive Plan
  - The application (i.e. rezoning amendment, which only includes a portion of properties in the area) will impede the normal and orderly development and improvement of surrounding property;
  - Does not meet elements of "practical difficulties"

Public Hearings

- *<u>Not</u> Valid Findings of Fact for Denying Applications*
  - NIMBYs (Not In My Back Yard) came to the meeting and complained
  - I don’t like these kinds of businesses
  - This is not the highest and best use of the property
  - We don’t need any more of those kinds of businesses

Case Study: Hoyt et. al. v. City of Minneapolis

A public hearing gone wrong…

Facts:

Planning applications for a mixed-use tower and 2 townhouse structures in the Loring Hill neighborhood

Public Hearings

Planning Commission denied all applications

Developer appealed to the City Council claiming they were denied their right to a fair hearing (Due Process)

Public Hearings

At trial, the Developer introduced copies of emails from a Council member to various constituents:

- "I have already come out against the height of the project"
- "I … will continue to represent the many voices in opposition to the project"
- "I will do my best to advocate against the appeal in committee"

Public Hearings

"[P]lease do not be spreading the word that I have made up my mind and am working to oppose the variance on this project. <u>If the developer hears this they will rightfully question that they didn't get a fair hearing with me and that I made up my mind prior to the public hearing."</u>

Public Hearings

- *What did the District Court decide?*

The Council member took a position in opposition to the applications and exhibited a closed mind prior to the public hearing. This was a violation of the developer's federal constitutional right to due process.

Public Hearings

You cannot always vote the way neighborhood wants you to vote or even the way you want to vote.

You must vote the way the Rule Books require you to vote.

Conditional Use Permit

In order to approve a Conditional Use Permit:

- Must be compatible with the existing neighborhood
- Must conform to the Comp. Plan
- Cannot endanger public health, safety, welfare

Conditional Use Permit

- Once granted, cannot be revoked unless there is a violation
- May add reasonable conditions that are directly related to the use “sufficient nexus”
- Attaches to the property (should be recorded)

Variance

- VARIANCE: Approval to depart from the requirements of the zoning ordinance; permission to “break the rules.”
  - Standard test for zoning variances – practical difficulty

Practical difficulties

- Variances ***<u>may</u>*** be granted, but are not required to be granted, when there are "practical difficulties"

  1) Property will be used in a **reasonable manner**
  2) There are circumstances **unique to property** not caused by landowner
  3) The variance will not alter **essential character** of locality

Variance – Reasonable Manner

- The owner wants to use the property in a reasonable way but cannot do so under the rules of the ordinance.

Variance – Unique Circumstances

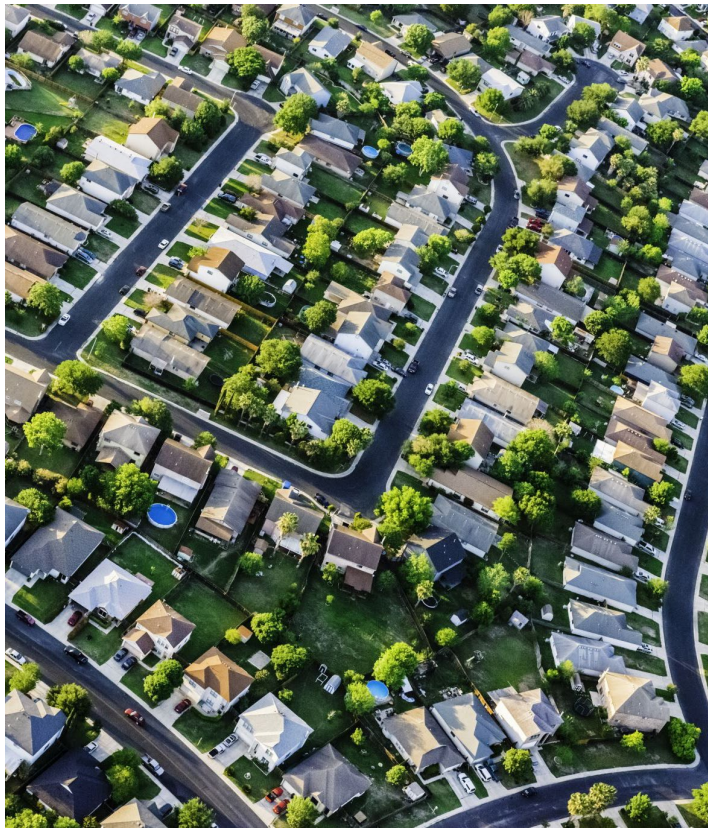
Usually relates to unique physical characteristics of the property

Economic considerations alone are not sufficient = you cannot ask them how much it will cost to comply with the ord. vs. the cost if they get the variance

Unique Circumstances cannot be created by the landowner

Variance – Character of Neighborhood

- Look at whether the result will be out of scale, out of place or otherwise inconsistent with the area



Variance – General Considerations

- Conditions must be directly related to and bear a rough proportionality to the impact created by the variance

Variance – General Considerations

Precedent only applies to applications that are similarly situated in facts and in time

Use variances are not allowed

An error by city staff does not entitle a person to a variance

Zoning Ordinance Amendment

- In order to approve a Zoning Ordinance Amendment Application:
  - Must comply with Comprehensive Plan
  - Must not impede orderly development
  - Must not endanger, injure, detrimentally impact surrounding properties

Re-zoning (Map)

Greater burden on applicant than on government to change zoning

Relationship to comprehensive plan

- Cannot allow “spot” zoning

Rezoning Residential to Commercial or Industrial requires 2/3 vote

Thank you for your time and attention

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