



**NOTICE OF PLANNING COMMISSION
WORK SESSION TO DISCUSS:**

1. Legal Training

7 P.M., MONDAY, MARCH 25, 2024

**2ND FLOOR BOARD ROOM OF CITY HALL
4701 HIGHWAY 61 N
WHITE BEAR LAKE, MN**

**NO ACTION WILL BE TAKEN
AT THIS MEETING**



City of White Bear Lake
Community Development Department

MEMORANDUM

To: Planning Commission
From: Jason Lindahl, AICP Community Development Director
Date: March 25, 2024
Subject: Legal Training

SUMMARY

The Planning Commission will hold a work session for legal training. City Attorney Troy Gilchrist will conduct the legal training and present the attached slides. Please review this information and bring your questions and comments to the meeting.

Items covered during the legal training will include:

- Zoning Authority and Limits
- Role of the Planning Commission
- How Zoning Works
- Types of Permit and Zoning Decisions
- Conducting Business
- Specific Issues
- Questions

RECOMMENDATION

This item is informational only.

ATTACHMENTS

Legal Training Presentation

TRAINING SESSION FOR THE CITY OF WHITE BEAR LAKE PLANNING COMMISSION

Troy Gilchrist, City Attorney
Kennedy & Graven
March 25, 2024

Overview

- Zoning Authority and Limits
- Role of the Planning Commission
- How Zoning Works
- Types of Permit and Zoning Decisions
- Conducting Business
- Specific Issues
- Questions

Zoning Authority

- Part of the City's general police powers
- Minnesota Statutes, sections 462.351 - 462.364
- Legislative 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, to preserve agricultural and other open lands, and to promote the public health, safety, and general welfare.
 - Municipal planning will assist in developing lands more wisely to serve citizens more effectively, will make the provision of public services less costly, and will achieve a more secure tax base.

Limitations on Authority

- Must follow statutory requirements as a “creature of the legislature”
 - Notice requirements; types of approvals; 60-day rule; nonconforming uses
- Constitutional limits
 - First Amendment (signs, adult uses); due process; equal protection; regulatory takings
- Federal laws
 - Religious Land Use and Institutionalized Persons Act (RLUIPA), Fair Housing Act, Americans with Disabilities Act
- Court cases interpreting the law
 - Large body of common law on zoning that can change significantly over time

Role of the Planning Commission

- The Planning Commission (PC) is the City's Planning Agency
- The PC holds hearings on land use matters requiring a hearing, including on variances and appeals, and makes its recommendation to the City Council, but it also serves a variety of other functions such as assisting in the development of the City's comprehensive plan
- The PC is advisory to the City Council
- Plays a critical role in developing findings and a record on a matter
- The City Council is not legally bound by the PC's recommendations
 - Council then needs to develop its own findings to support its decision

Statutory Duties

- To prepare and update the **comprehensive plan** for city council consideration; to periodically review the plan and recommend amendments when necessary. Minn. Stat. § 462.355, subd. 1.
- To conduct at least one **public hearing on the comprehensive plan** or any amendment thereof. Minn. Stat. § 462.355, subd. 2.
- To study and recommend to the city council reasonable and practicable means for implementing the comprehensive plan, such as the adoption of zoning ordinances, subdivision ordinances, capital improvement programs, etc. Minn. Stat. § 462.356, subd. 1.
- - To review proposals for the acquisition, disposal or capital improvement of publicly owned land and report findings to the council concerning conformance to the comprehensive plan. Minn. Stat. § 462.356, subd. 2.
- To conduct **public hearings on proposed zoning ordinances or amendments** thereto. Minn. Stat. § 462.357, subd. 3.
- To make recommendations to the city council regarding proposed zoning ordinances (upon instruction by the city council). Minn. Stat. § 462.357, subd. 4.
- To **hear and make recommendations for variances** as the board of appeals and adjustments. Minn. Stat. § 462.357, subd. 6 (2)
- To conduct **hearings on conditional use permit applications and interim use permit** applications and make recommendations to the city council. Minn. Stat. § 462.3595
- To hold **public hearings on and recommend action on site plans**. City Code § 526.
- To prepare and recommend **official maps** to the City Council. Minn. Stat. § 462.359, subd. 2.
- To hold public hearings on proposed plats and make recommendations to the city council. Minn. Stat. § 462.358, subd. 3b

Fiduciary Duty of Members

- All members owe a duty of loyalty, care, and trust to the position and to the community
- Avoid self-dealing, undermining regulations
- Review the packet materials to make an informed decision
- Avoid conduct that interferes with or undermines the decision-making process
- Don't attempt to assert individual authority
- Don't attempt to speak on behalf of the body
- Respect the body's attorney-client privilege

How Zoning Works

- A basic goal of zoning is to plan for growth, separate incompatible uses, and to establish certain standards to reduce land use conflicts
- Comprehensive plan to guide development
- The City is divided into different zoning districts
- The Code indicates which uses are allowed to occur within each district and classifies them as:
 - Permitted Use
 - Conditional Use
 - Interim Use
 - Accessory Use

How Zoning Works

- If a use is not expressly allowed, it is prohibited
- The Code establishes certain general and specific performance standards that must be complied with
 - Setbacks, height restrictions, parking requirements, impervious surface limits, limits on outdoor storage, signs regulations, nuisance prohibitions
- The City also regulates the subdivision of property
 - Establishes lot size and frontage requirements, public infrastructure requirements
 - The City enters into a development agreement with the developer to help ensure the land is properly developed

How Planning Works

- The City is required to adopt and periodically update its comprehensive plan.
- The comprehensive plan is a “compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality ...” Minn. Stat. 462.352, subd. 5.
- Guides future development and is implemented through the City’s official controls
- The plan is used as a guidepost when making land use decisions

Types of Permits / Requests

- Administrative Permits
 - Building permit, sign permit
- Interim Use Permits
 - Established by statute – “a temporary use of property until a particular date, until the occurrence of a particular event, or until zoning regulations no longer permit it.”
 - Must satisfy certain criteria, including the date or event that will terminate the permit
 - Requires a public hearing and conditions can be placed on the permit
 - Owner can typically apply for a new permit prior to expiration of the current permit, which provides an opportunity to adjust the conditions as needed

Types of Permits / Requests

- Conditional Use Permits
 - Established by statute – applicant must show the establish standards and criteria stated in the ordinance will be satisfied – both general and specific
 - Requires a public hearing and conditions can be added to the permit
 - Duration – “A conditional use permit shall remain in effect as long as the conditions agreed upon are observed”
 - CUPs must be recorded with the county recorder
 - There is no opportunity to revise the conditions on the permit unless the owner seeks an amendment or a new CUP

Types of Permits / Requests

- Variance
 - Allows an owner to not fully comply with the requirements of the ordinance
 - Use variances are not allowed
 - A variance cannot be issued unless:
 - It is in harmony with the general purpose and intent of the ordinance;
 - Is consistent with the comprehensive plan; and
 - The applicant establishes that there are practical difficulties in complying with the ordinance
 - Practical difficulties
 - Proposes to use the property in a reasonable manner
 - Plight of the owner is due to circumstances unique to the property not created by the owner
 - Will not alter the essential character of the locality
 - Economic considerations alone do not constitute practical difficulties

Types of Permits / Requests

- Code Language: “Variances from the strict application of the Zoning code may be granted to alleviate practical difficulties such as problems caused by public actions, unusual topography, lot shapes, wetlands, or other exceptional physical conditions. The situation must be such that strict application of the Zoning Code would result in exceptional practical difficulty, which would deprive the owner of the reasonable use of the land or of the building involved.”
- Questions when evaluating variances
 - Is variance in harmony with purposes and intent of the ordinance?
 - Is the variance consistent with the comprehensive plan?
 - Does the proposal put property to use in a reasonable manner?
 - Are there unique circumstances to the property not created by the landowner?
 - Will the variance, if granted, alter the essential character of the locality?

Types of Permits / Requests

- Text Amendment
 - Request to amend the code
- Rezoning
 - Request to rezone a particular parcel
- Appeals
 - Appeal a decision or order of staff

Types of Zoning Decisions

- Zoning decisions are placed into two general categories
 - Legislative & Quasi-Judicial
- The distinction is critical in how a court reviews the decision
- Legislative decisions involve setting public policy and affect the general public
 - Involves the weighing of policy objectives
 - Includes deciding which uses are allowed in a particular district and how they are to be classified – permitted, accessory, conditional use, interim use
 - Types of applications:
 - Adopting or amending the comprehensive plan
 - Adopting or amending the zoning ordinance, including rezoning property or text amendments
 - PUD's – discretion in determining if a proposed use qualifies for flexibility

Types of Zoning Decisions

- Quasi-Judicial decisions affect the application of the established policy in a particular situation and affects only a few individuals
 - Involves the application of the law to the facts
 - Issuance or denial of permits, variances
 - The policy decisions have already been made, these involve applying existing law to the facts, which is why written findings of fact are so important
- Types of applications
 - Variances
 - Site Plans
 - Conditional Use Permits
 - Interim Use Permits
 - Subdivisions

Conducting Business – Rules of Procedure

- Must follow the Open Meeting Law (discussed later)
- Robert's Rules of Order Newly Revised (714 pages)
- Keep it simple
 - Chair runs the meeting
 - Discussion, motion, second, any further discussion, then vote
 - Repeat the motion if it is complicated or there was a long discussion
 - No need to read the document
 - Can amend a motion, but don't attempt to amend an amendment
 - Amendment is voted on, then return to main motion
- Chair - Give members an opportunity to speak to an issue, but avoid polling members and don't allow a few to dominate the discussion to the exclusion of others

Conducting Business – Public Participation

- The public only has a right to speak at a public hearing
- Can provide an opportunity to speak on a matter at the City Council meeting, but then generally need to allow everyone to speak (second hearing)
- Stating rules for public input is important (no guarantee will work)
 - Time limit; avoid repetitive comments; speak once unless chair allows second rounds of comments
 - Usually allow applicant to speak first to explain the request and answer questions (doing so does not compel a second hearing)
 - Can rule people out of order and require to leave the room, but the bar at which that is allowed is high (disorderly conduct statute unconstitutional)

Conducting Business – Scope of Discretion

- Legislative decisions (adopt or amend ordinance and comp plan; rezoning)
 - Most discretion, but subject to legal limits
 - Procedure, preemption, conflict, over broad/vague, constitutional, etc.
 - Narrow review by the courts due to separation of powers (legislative/judicial)
 - Rational basis test – if there was any rational basis for the decision it must be upheld
- Quasi-Judicial decisions (permits, variances)
 - Less discretion since only applying existing law to the facts
 - Courts review whether the decision is reasonable
 - Is there a reasonable basis for the decision or is the decision unreasonable, arbitrary, or capricious
 - Correct application of zoning standards and law

Conducting Business – Scope of Discretion

- Presumption a permit will be issued if the applicant meets the standards
 - More so with site plans, CUPs and IUPs, than with variances
 - You have already determined the particular use is allowed with a CUP, so it generally needs to be issued, but conditions can be added to address potential negative impacts
- A permit can be denied, but any denial must be based on specific health, safety, or welfare concerns, or incompatibility with the comprehensive plan
- Cannot rely solely on neighbor opposition or vague concerns about property values, health concerns, etc. to deny

Conducting Business - Advocacy

- Members must remain neutral on matters that will come before them for a quasi-judicial decision or could undermine the process
 - Some cheerleading is ok
- Strong advocacy for or against a proposal can “poison” the decision-making process and violate due process
- Remain neutral until the matter is formally before you (like a judge)

Conducting Business – Findings of Fact

- Developing good findings is critical to having a quasi-judicial decision upheld
- Must be contemporaneous with the decision (in front of you)
- Discussion on a matter can help or hurt, a lot
 - Considered improper factors, discriminatory, arbitrary
- If reach a different conclusion than the staff recommendation, it is important to state the findings on which the different conclusion is based so those findings can be forwarded to the City Council as part of the staff report for its consideration

Conducting Business – Judicial Review

- Record Review
 - “When the proceeding was fair and the record clear and complete, review should be on the record.”
 - “Where the municipal body has proposed formal findings contemporaneously with its decision and there is an accurate verbatim transcript of the proceedings, the record is likely to be clear and complete.”
- Focus of the litigation is on the record and doesn’t allow new witnesses, testimony, etc.
- Dramatically increases the chances of resolving the matter by summary judgment

Specific Issues – 60 Day Rule

- Statute applies to a “request” – zoning applications (not building permits or other administrative permits)
- Statute requires a decision on a request within 60 days from the date of application or it is deemed approved
- Can extend the period by up to an additional 60 days if provide written notice of extension before end of first 60 days
- Applicant can request an extension (not required to approve it)
- There are limited circumstances when the clock stops (EAW)
- 120 day rule applies to subdivisions

Specific Issues – Open Meeting Law

- State law requiring public business to be discussed in public
 - Notice, keep journal, have copy of packet in the meeting room, allow public to view journal
- Triggered when:
 - Gathering
 - Quorum or more
 - Governing body
 - Discuss, decide, or receive information
 - Official business

Specific Issues – Open Meeting Law

- If triggered, need to be in a properly noticed open meeting
 - Closed meetings are rarely allowed (litigation; employee review)
- Need to avoid discussions among a quorum outside of a meeting
 - Serial meetings (hub and spoke, or domino)
 - Electronic communications (reply all)
 - One-way communication ok, but work through the office
- Violations may result in personal civil fines (\$300 per occurrence), be required to pay up to \$13,000 in legal fees, and three strikes removal from office

Specific Issues – Data Practices Act

- Requires the keeping, classification, and making available to the public government data
- Mostly a staff issue, but it does directly affect members
- Government data is subject to a request even if it is on your phone, home computer, personal email account, handwritten notes
- The office may need to request you to provide such data if requested
- Treat everything you type/write down regarding City business as potentially public
- If sued, litigation hold goes into effect – do not delete any City related data

Specific Issues – Conflicts of Interest

- Statutory - direct or indirect personal financial interest
 - Potentially punishable as a gross misdemeanor
- Common Law Conflict – have a “direct interest” in the matter before the body
- Avoid by stating the conflict on the record and withdraw from the deliberations by not taking part in the discussion and not voting
- Need to be up front about a potential conflict and seek assistance if there are any questions
 - There are clear conflicts, but also a lot of gray area where it is not clear

Specific Issues – Personal Liability

- City needs to indemnify members, unless act outside of scope of duties or acts criminally
 - Acting like a self-appointed inspector or enforcement officer
- The law provides certain limits and exemptions from liability for public officials
- Personal liability is rare, but may be personally named in a suit
- Best way to avoid actual legal issues is to stay within your role, remember your fiduciary duty, and seek advice as needed

Future

- The Legislature has become increasingly willing to impose zoning decisions on cities.
 - Granny pods – required to address, but optional
 - Sacred community housing – required to allow micro units (MS 327.30)
 - Currently, bills to increase density and reduce parking requirements
- These statutory changes will likely trigger a need for further amendments to the city's zoning regulations.

QUESTIONS?