

Agenda
City Council Meeting
City of Edina, Minnesota
JOINT MEETING WITH PLANNING COMMISSION
Call 800-374-0221, enter Conference ID 6746009 to listen to meeting
Wednesday, March 24, 2021
7:00 PM

- I. Call To Order
- II. Roll Call
- III. Approval Of Meeting Agenda
 - A. Community Planning and Zoning Training
- IV. Adjournment

The City of Edina wants all residents to be comfortable being part of the public process. If you need assistance in the way of hearing amplification, an interpreter, large-print documents or something else, please call 952-927-8861 72 hours in advance of the meeting.



CITY OF EDINA

4801 West 50th Street

Edina, MN 55424

www.edinamn.gov

Date: March 24, 2021

Agenda Item #: III.A.

To: Mayor and City Council

Item Type:

Other

From: Cary Teague, Community Development Director

Item Activity:

Subject: Community Planning and Zoning Training

Discussion, Information

ACTION REQUESTED:

None requested.

INTRODUCTION:

Joint training session with the City Council and Planning Commission regarding Planning and Zoning. Facilitated by John W. Shardlow, FAICP, Stantec Consulting.

ATTACHMENTS:

Community Planning and Zoning Training Presentation

City of Edina

Community Planning and Zoning Training for Planning Commissioners and City Council Members



March 24, 2021



Presenter

John W. Shardlow, FAICP
Senior Principal



Agenda

- 7:00 pm - Welcome/Introductions, Objectives for the Session
- Historical Overview
- Zoning Ordinance
- Legal Issues
- Findings of fact, making the public record
- Planning Commission Role
- Conflict of interest, Open Meeting Law, Running Effective Meetings
- Discussion
- 9:00 pm Adjourn



Historical Overview

- First land use regulations, public health laws in England- light, circulation, etc.
- Pre-zoning, before 1916, nuisance laws – the use of police power to protect the public health, safety and welfare.
- Early zoning rules – assumption of validity of local zoning decisions
- Modern judicial review – search for a rational basis, relationship to comprehensive plan.



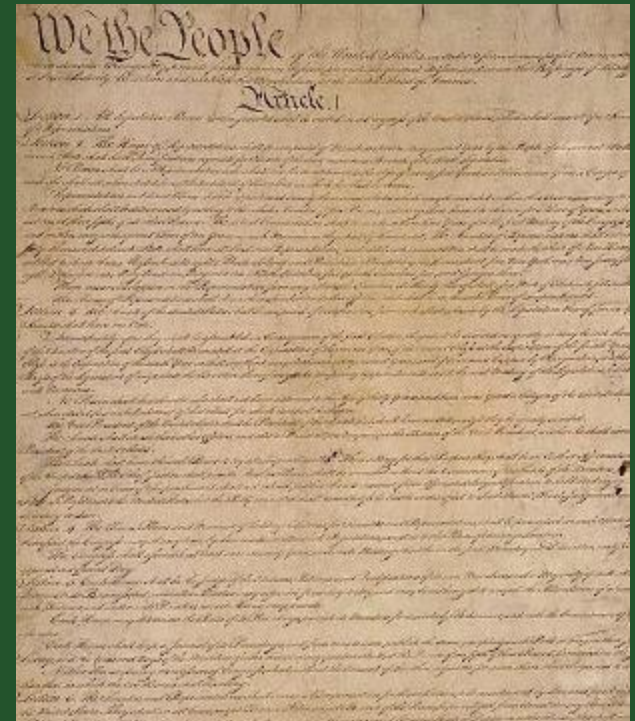
Our Forefathers

- Constitution framers - landed gentry, not peasants
- Property rights very important
- “Life, liberty and pursuit of happiness” in *Declaration of Independence*
- “Life, liberty and property” in *Constitution* (Bill of Rights)



United States Constitution

- Established Federal Government as one of *limited* and *expressly enumerated* powers.
- Grants general *police power* to the States, not the Federal Government.
- States delegate the police power to local government units through the State *enabling legislation*.



Enabling Statutes

- Municipalities – Minn Stat. 462.351 et. seq. (applies to all cities and towns)
- Counties – Minn Stat. 394.21 et. seq. (applies to counties having less than 300,000 population)
- Metropolitan Area Local Units – Minn Stat. 473.851 to 473.871 and 473.175 (all cities, counties, and towns in the seven-county metro)



United States Constitution



Key Principles:

- Due Process
- Equal Protection
- Takings



Due Process – Two Prongs



Procedural Due Process

- Process, procedure must be fair
- No person may be deprived of use of property without a **fair hearing**, opportunity to be heard, defend against the proposed action
- Public hearing, notice given
- Chance to speak to decision makers about the action

Substantive Due Process

- Substance, content must be reasonable
- No person may be deprived of use of property under **circumstances** that are unreasonable, arbitrary, or capricious
- Facts, findings, conclusions must be reasonable



Equal Protection (14th Amendment)

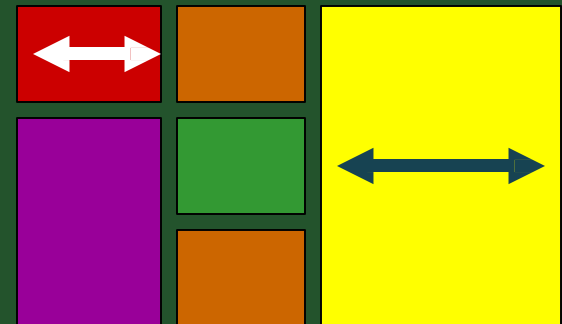


“ . . . nor shall any State
 . . . deny to any person
 within its jurisdiction
 the **equal protection**
 of the laws.”



Equal Protection

- No law may unduly favor one group over another nor impose a hostile discrimination on any particular group
- “reasonableness of the classification” - reasons for treating one use or group differently from another can be acceptable



A Question of Balance

**Common
Good**

Police
Power

**Individual
Rights**

Constitution



Official Roles & Responsibilities

- Staff
- Planning Commission
- Parks Commission
- City Council (County or Town Board)



Staff Role

- Administer planning process
- Initial contact with applicants and developers
- Prepare planning reports
- Technical advice to Planning and Parks Commissions, City Council & Public



Planning Commission Role

- Responsible for preparing and recommending a plan for the community's future
- May serve as Board of Adjustment and make decisions regarding variances (subject to appeal to governing body)



Planning Commission Role

- Review and Make Recommendations on:
 - Comprehensive plan amendments
 - Rezoning
 - Subdivisions
 - Conditional Use Permits
 - Variances – final action *
 - Planned Unit Developments



City Council Role (Town/County Board)

- Sole legal authority in City government
- Authority to adopt a comprehensive plan, parks master plan
- Controls budget



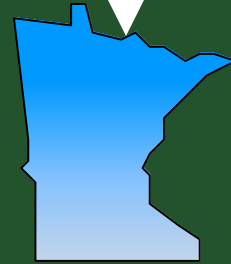
City Council Role (Town/County Board)

- Decide/Approve
 - Comprehensive plan
 - Amendments
 - Rezoning
 - Plats
 - Variances – appeals
 - Conditional use permits



Role of the Zoning Ordinance

- Its purpose is to **implement the comprehensive plan**
- Source of zoning authority is the state enabling legislation – **limited to what is adopted in the ordinance**
- Standards must be **reasonable means to legal ends**



Role of the Zoning Ordinance

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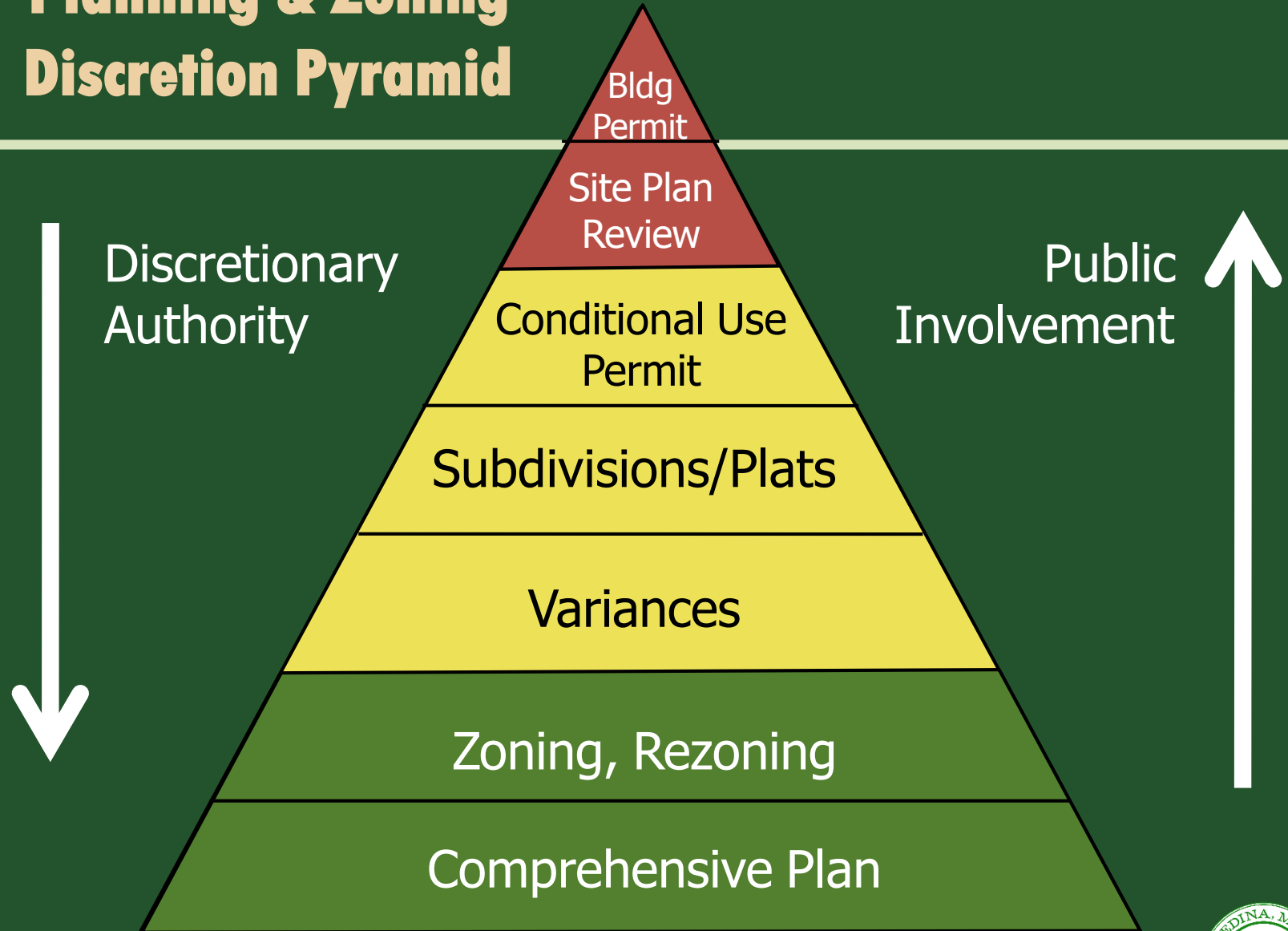
- Its purpose is to **implement the comprehensive plan**
- Source of zoning authority is the state enabling legislation
 - **limited to what is adopted in the ordinance**
- Standard reason for legal



- Source of zoning authority is the state enabling legislation
 - **limited to what is adopted in the ordinance**



Planning & Zoning Discretion Pyramid



The Rule Books

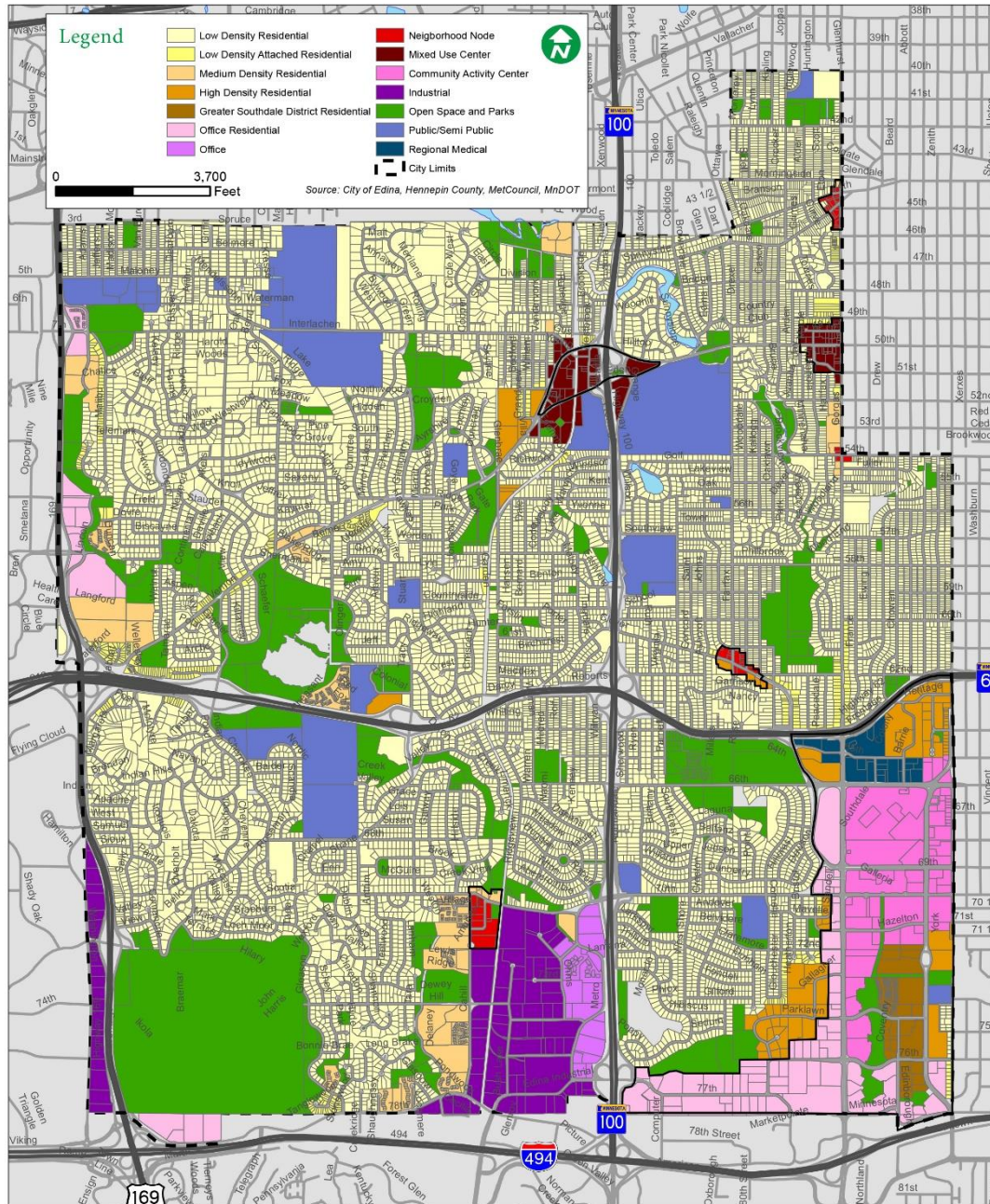
- Planning Commission and Board of Adjustments must follow the guiding documents:
 - Comprehensive Plan
 - Zoning Ordinance
 - Subdivision Ordinance



Comprehensive Plan

- Mandatory in 7-County metro area
- Guide for future development
- Strategic map to reach the vision of the City
- General guiding policy document
- Prepared by professional planners and consultants, not lawyers
- Foundation for Zoning Ordinance

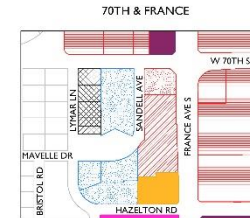
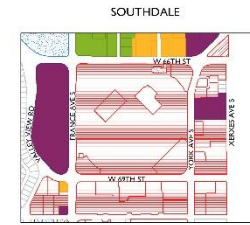
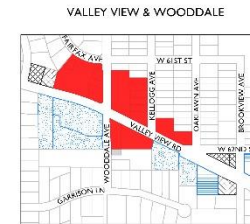
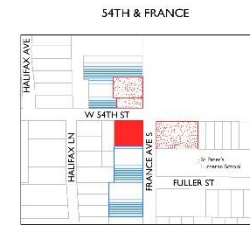
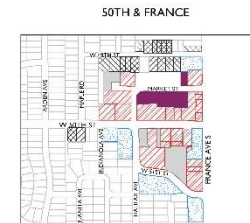
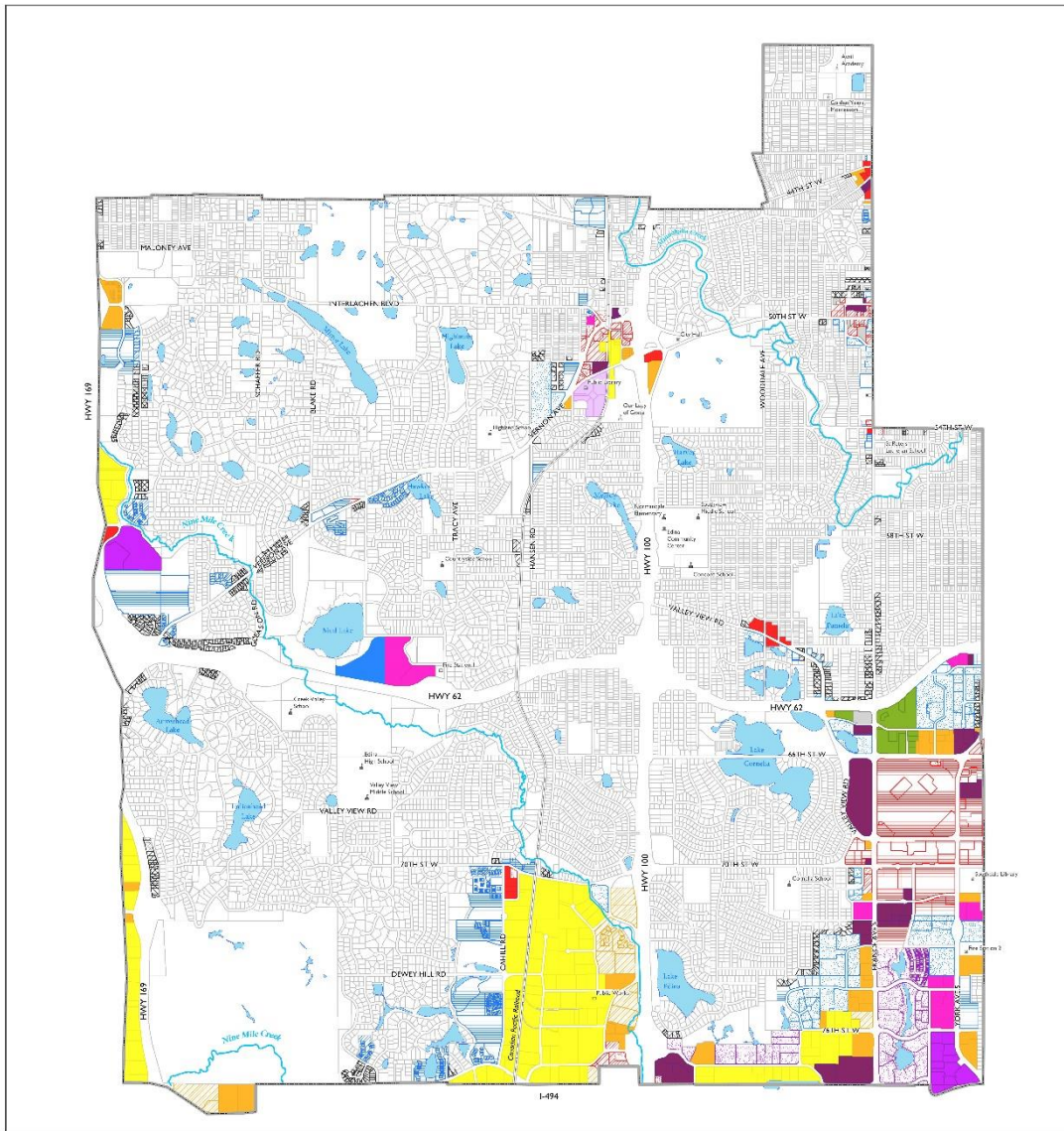
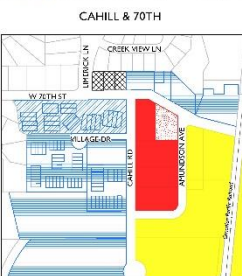
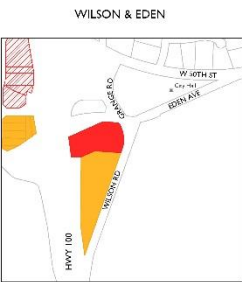
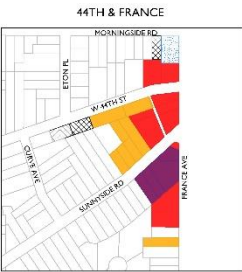




Edina Comprehensive Plan



Edina Zoning Map



Zoning Map

Legend

- R-1 - Single Dwelling Unit
- R-2 - Double Dwelling Unit
- PRD-1 - Planned Residence
- PRD-2 - Planned Residence
- PRD-3 - Planned Residence
- PRD-4 - Planned Residence
- PRD-5 - Planned Residence
- PCD-1 - Planned Commercial
- PCD-2 - Planned Commercial
- PCD-3 - Planned Commercial
- PCD-4 - Planned Commercial
- POD-1 - Planned Office
- POD-2 - Planned Office
- RMD - Regional Medical
- PID - Planned Industrial
- PUD - Planned Unit Development
- APD - Automotive Parking
- PSR-4 - Planned Residence
- MDD-4 - Mixed Development
- MDD-5 - Mixed Development
- MDD-6 - Mixed Development
- Lakes
- Creeks
- Edina Boundary
- Railroad
- Public Building
- Public School
- Private School

Zoning Ordinance

- Must be reasonable and have a rational basis for the regulation
- What can be regulated by Ordinance?
 - Uses of Buildings and Property
 - Buildings (bulk, height, exterior materials, setbacks, location, # of buildings/lot)
 - Lot coverage
 - Minimum Yard areas (setbacks)
 - Density
 - Parking
- More specific than Comp Plan – legal tool



Types of Uses

PRINCIPAL: The Main/Primary Use of the Property

ACCESSORY: A Secondary/Subordinate use of the Property (not allowed on its own)



Permitted Use

PERMITTED USE: A use that is **permitted** “as of right” with no special approval required or conditions attached.



Conditional Use

CONDITIONAL USE or SPECIAL USE: a **permitted use** to which **reasonable conditions** may be attached based on factual findings.

Runs with the land *in perpetuity* (forever) – no time limit, not granted to an individual



Interim Use

INTERIM USE:

- A temporary use of the land
- To which reasonable conditions may be attached, and;
- Which will expire:
 - On a certain date,
 - After a certain event, or
 - When zoning ordinance no longer allows it

Permitted by State statute, but must have provision in Zoning Ordinance.



Zoning Ordinance

- Municipal Planning Act gives authority to regulate land use and development
- Municipal Planning Act limits authority to regulate certain uses (must be allowed):
 - Manufactured homes
 - Feedlots
 - Earth Homes
 - State Licensed Residential Care Facilities



Zoning Ordinance

- Other Laws that limit authority:
 - Religious Land Use and Institutionalized Persons Act (RLUIPA) - cannot burden religious exercise
 - Telecommunications Act (Federal)
 - Regulations cannot prohibit or have the effect of prohibiting wireless communication
 - Must allow antenna towers
 - MN State Statue 237.163 (May 2017)
 - “Small wireless facilities” allowed in ROW
 - ADA/Fair Housing Act
 - Cannot have different rules for buildings that house people with disabilities



Subdivision Regulations

- Regulates:
 - The division of land
 - Lot sizes
 - Complementary streets to existing land
 - Requirement for parks, trails
 - Preservation of natural resources
 - Payment of park dedication fees (FMV of land and can only be used for park improvements, not operational expenses)



Subdivision Regulations

- Ensures that new development and redevelopment meets standards for a safe, functional and enjoyable community
- Even 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

- Plat must:
 - Be certified by a registered land surveyor
 - Have a name
 - Be signed by all fee owners, mortgage holders, contract for deed holders



Subdivision Regulations

- 2 steps
 - Preliminary Plat approval (120 days)
 - General nature, design and scope of project
 - May add conditions such as:
 - Add sidewalks/trails
 - Reduce number of lots
 - Require MNDOT review & approval
 - Final Plat approval (60 days)
 - Can combine hearing and approve both simultaneously



Minimum lot size requirements

Standards Dictated by Chapter 32

Min. Lot Area

9,000 square feet

- *unless located in a defined neighborhood with a median lot area greater than 9,000 square feet, which requires minimum lot size not less than the neighborhood median*

Min. Lot Width

75 feet

- *unless located in neighborhood with a median width greater than 75 ft., then minimum width becomes not less than the median width*

Min. Lot Depth

120 feet

- *unless located in neighborhood with a median depth greater than 120 ft, then minimum shall not be less than the median lot depth*



Variance

- VARIANCE: Approval to depart from the requirements of the zoning ordinance; permission to “break the rules.”
 - Standard – PRACTICAL DIFFICULTY



Variance – Practical Difficulties

- Variances may 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.
- This does not mean the land cannot be put to any use without the variance, just that the owner's request is reasonable.



Variance – Unique Circumstances

- Usually relates to physical characteristics of the property
- Economic considerations alone are not sufficient



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



Variance – Conditions of approval

Acceptable provided that they are directly relevant to addressing a particular problem – nexus

If the site conditions may result in unsightly views, you can require screening, not unrelated performance standards



Zoning Ordinance Amendments

Zoning Ordinance amendment is changing the terms, classification or boundary of a Zoning District.

- Text or Map amendment



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



Considerations:

- Most Planning Commissions spend the vast majority of their time processing zoning applications (implementation) as opposed to planning
- Zoning is a tool and its purpose is to implement the comprehensive plan
- The Official Zoning Map and the Zoning Ordinance are constantly becoming obsolete



Considerations:

- Minnesota cities misuse variances because they fail to keep their standards current
- They over rely on conditional use permits and misunderstand the discretion they have in their approval
- Public participation is reactionary and not proactive



Re-zoning (Map)

- Greater burden on applicant than on government to change zoning
- Relationship to comprehensive plan
 - Cannot allow “spot” zoning: small island of nonconforming use
- Rezoning Residential to Commercial or Industrial requires 2/3 vote



Re-zoning (Text)

- Cannot change the zoning rules ad hoc
- Must amend the ordinance according to state law and procedure set out in city code for amendments



Comprehensive Plan Amendment

- Comprehensive Plan is the guiding document for the City
- The Planning Commission prepares, reviews and recommends amendments to the Comp Plan.
- When in conflict with Zoning Ordinance, the Comprehensive Plan wins:
 - *A city is obliged to zone in accordance with the Plan*



Planned Unit Developments

- PUD: A **rezoning** or **conditional/special use permit** to review a project as a “unit” of several buildings or uses, rather than individual buildings on individual lots, encouraging creativity and innovation, and allowing flexibility in the strict application of zoning standards
- Edina’s Design Experience Guidelines support PUD reviews



Open Meeting Law

General Rule:

All meetings are open to the public.



Open Meeting Law

- *General Rule:* All meetings are open to the public.
- “Meetings” are not defined in the Open Meeting Law
- 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

Inside-the-room meetings

- Notice of the date, time, location is posted



Outside-the-room meetings

- Email
- Social Media
 - Facebook
 - Twitter
 - LinkedIn



Open Meeting Law

- You are violating the Open Meeting Law if:
 - You are friends on FB with a quorum of PC members; or
 - You are followed on Twitter by a quorum of PC members; or
 - You are “LinkedIn” with a quorum of PC members; and
 - **You discuss, post, or opine about any official business that comes before you at the PC**



Open Meeting Law

- Suggestions for site visits
 - Nothing wrong with site visits
 - Maintain objective fact finding atmosphere versus advocacy for/against project
 - Let project representatives know about organized opposition and afford them opportunity to attend
- Visit site as entire commission. (Notice site visit as public meeting)



Open Meeting Law

- Suggestions for site visits:
 - If staff member or consultant will be preparing planning report, bring him/her
 - Establish ground rules prior to meeting:

Visit for objective fact finding purposes only, will not receive information to influence opinions. All such information should be at scheduled public meetings.



Open Meeting Law

- Suggestions for individual advocate meetings
 - Be careful
 - Strongly consider having a staff member present (spell out in by-laws)



Creating the Public Record

- Every time you review an application, hold a hearing and make a recommendation you are creating a public record of your decision
- It is your job to sort through, find and document relevant facts and interpret them according to the applicable standards



Prototypical Findings of Fact

- Introduction: Date, purpose of meeting, description of project
- Findings of Fact:
 - Who is applicant, what are they proposing, what is site currently used for and who owns it
- Applicant's control of land
- Size of property, zoning, nature of rezoning



Prototypical Findings of Fact

- Comprehensive Plan Relationships:
 - Land Use Plan designation
 - Relationship to other Comp Plan element
 - Consistency with plan goals and policies
 - Relationship to other plans or studies



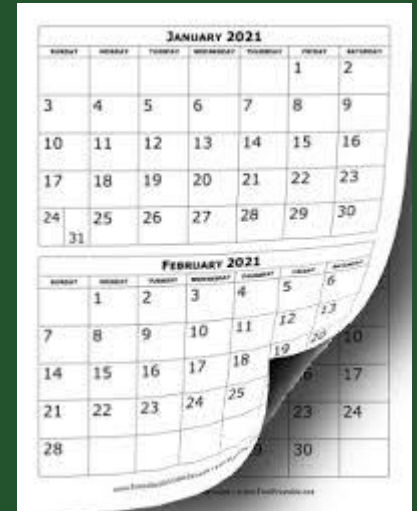
Prototypical Findings of Fact

- Standards/criteria for approval and how application meets standards
 - Factual findings
 - Expert testimony, reports used to make your decision, traffic studies, etc.
- Any other information that explains rational basis for decision
- Decision: Summarize request, state whether approval is granted/denied; adoption date.



60-Day Rule

- Application submitted
 - 15 business days to determine if it is complete
- If incomplete, must reject it in writing and state the reasons as to why it is incomplete



Public Hearings

What Kinds of Matters Require a Public Hearing by law? (Check your Zoning Code)

- Variances
- CUPs
- Interim Use Permits
- Zoning Code Amendments (text or map)
- Comprehensive Plan Amendments
- Preliminary Plat Approvals



Public Hearings

Legal requirements

- Published in official newspaper
- At least 10 days in advance of hearing
- Mailed notice to property owners within 350 feet of applicant's property
- Allow public comment at the hearing
- ONLY ONE PUBLIC HEARING IS REQUIRED



Public Hearings

- Why is a Public Hearing Important?
 - Due Process:
 - Notice = to all interested parties, including the public
 - The Record = full presentation by the applicant, City and the public



Public Hearings

- Why is Due Process important?
 - 14th Amendment to the US Constitution
 - Art. 1 Section 7 of the MN Constitution
 - Gives people an opportunity to present their case when a property interest is at stake



Public Hearings

- Make a decision and adopt Findings of Fact that:
 - Articulate the basis for the decision
 - Communicate to the applicant the approval or denial and the reasons



Public Hearings

- Approval: Valid Findings of Fact
 - Consistent with the Comprehensive Plan
 - Not endanger, injure, detrimentally impact surrounding properties
 - Meets definition of “practical difficulties” when applicable (Variances)



Public Hearings

- Approval: Not Valid Findings of Fact
 - But we really like the guy
 - Proposed use is better than what's there
 - Owner can't sell property with current situation
 - Owner already spent money assuming application would be approved



Public Hearings

- Denial: Valid Findings of Fact
 - Not consistent with the Comp Plan
 - Will endanger, injure, detrimentally impact surrounding properties
 - Does not meet elements of “practical difficulties”



Public Hearings

- Denial: Not Valid Findings of Fact
 - Neighborhood Opposition
 - NIMBYs (Not In My Back Yard)
 - The use does not reflect my values
 - The use isn't what I prefer to see on that property



Public Hearings

You cannot always vote the way citizens want you to vote. You must vote as the Rule Books require you to vote.



Sample Goals and Policies

- Goal:
 - Promote alternative transportation such as bicycling, walking, transit and rail.
- Policies:
 - Incorporate, where feasible, bicycle and pedestrian infrastructure when planning new roadways.
 - Require bike-parking facilities in new development.
 - Require, at a minimum, sidewalks along all new collector and arterial roadways.



Running and Participating in Effective Meetings

- All of the discussion and consensus building related to your decisions has to happen in public meetings
- You need to educate and guide the public and applicants to present relevant and timely information
- None of you are mind readers – you have to communicate with each other and build a public record



Creating a Strong and Successful Planning Commission

- Prepare and maintain an accurate and up to date **Procedures Manual** that explains clearly how your system works, what the applicant's responsibilities are, exactly what information is needed to process an application, and the schedule. At the very least, have an application checklist. This is the minimum requirement to protect the City's position in disputes regarding the 60-day rule.



Creating a Strong and Successful Planning Commission

- The Commission functions in two capacities:
 - By recommending policy, the Commission participates in the LEGISLATIVE process of preparing the Comprehensive Plan and adopting zoning. *Making the laws.*
 - The Commission also serves in a QUASI-JUDICIAL capacity when it reviews applications. *Interpreting the laws.*
- Once policy is set, it is the Commission's responsibility to apply it. Personal opinions are irrelevant.



Effective Discussion Skills

- **Respect All Participants**
- Ask for clarification
- Act as gatekeepers
- Listen
- Summarize
- Contain digression
- Manage time
- End the discussion
- Test for consensus
- Constantly evaluate the meeting process



Twelve Thoughts on Working Together

I. Listen

- a) To other commission members, citizens and staff
- b) Focus on listening rather than preparing response

II. Seek Consensus

- a) Discern common ground among competing view points
- b) Process may be more important than product
- c) More study may be helpful



Twelve Thoughts on Working Together

- III. Disagree Agreeably
 - a) Don't lose sight of issue at hand
 - b) Avoid grandstanding
 - c) Conflicts can be opportunity
- IV. Respect the Will of the Majority
 - a) Live with the results of vote on major issue. Move on.
- V. Respect the Rights of the Minority



Twelve Thoughts on Working Together

VI. Treat Everyone with Respect

- a) Do not publicly embarrass or humiliate others
- b) Focus on ideas/suggestions rather than questioning motives, intelligence or integrity

VII. Share Information

- a) All members should have same information in timely manner

VIII. Make Decisions in the Open

- a) Open environment where debate is encouraged and valued
- b) Avoid speaking as Commission as group outside of meetings



Twelve Thoughts on Working Together

- IX. Nurture the Value of the Individual, Recognize the Strength of the Team
 - a) No one is expert on every issue-take advantages of differences among members
 - b) Strength comes from working as a team
- IX. Trust Your Judgment, Make Tough Decisions
 - a) You are trusted to make informed decisions
 - b) The right decision on issue may not represent feelings of all residents
 - c) Key role: make decisions about greater good



Twelve Thoughts on Working Together

XI. Avoid “Meeting Night” Tunnel Vision

- a) Keep what happens at council meetings within the context of the operation of the entire city

XII. This too shall pass

- a) There will always be another controversial issue looming on the horizon
- b) Keep balanced perspective and maintain a healthy sense of humor



Examples Of Opening Statements By The Chair:

- Before I open the public hearing, I want to explain some important information to all of those who intend to participate in this process. We are the Planning Commission of the City of Edina. We have been appointed to serve on this commission by the City Council.
- The Planning Commission is responsible for preparing and recommending a Comprehensive Plan for the community. We also review planning applications to determine if they meet the standards contained in the zoning ordinance and subdivision regulations.



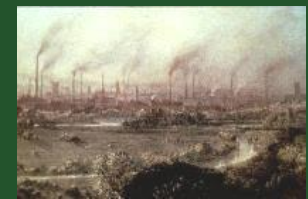
Examples Of Opening Statements By The Chair: (cont.)

- With certain types of applications it is also our responsibility to conduct a public hearing. The purpose of the public hearing is to ensure that everyone with an interest in the matter has an opportunity to present testimony and evidence in support of his/her position.

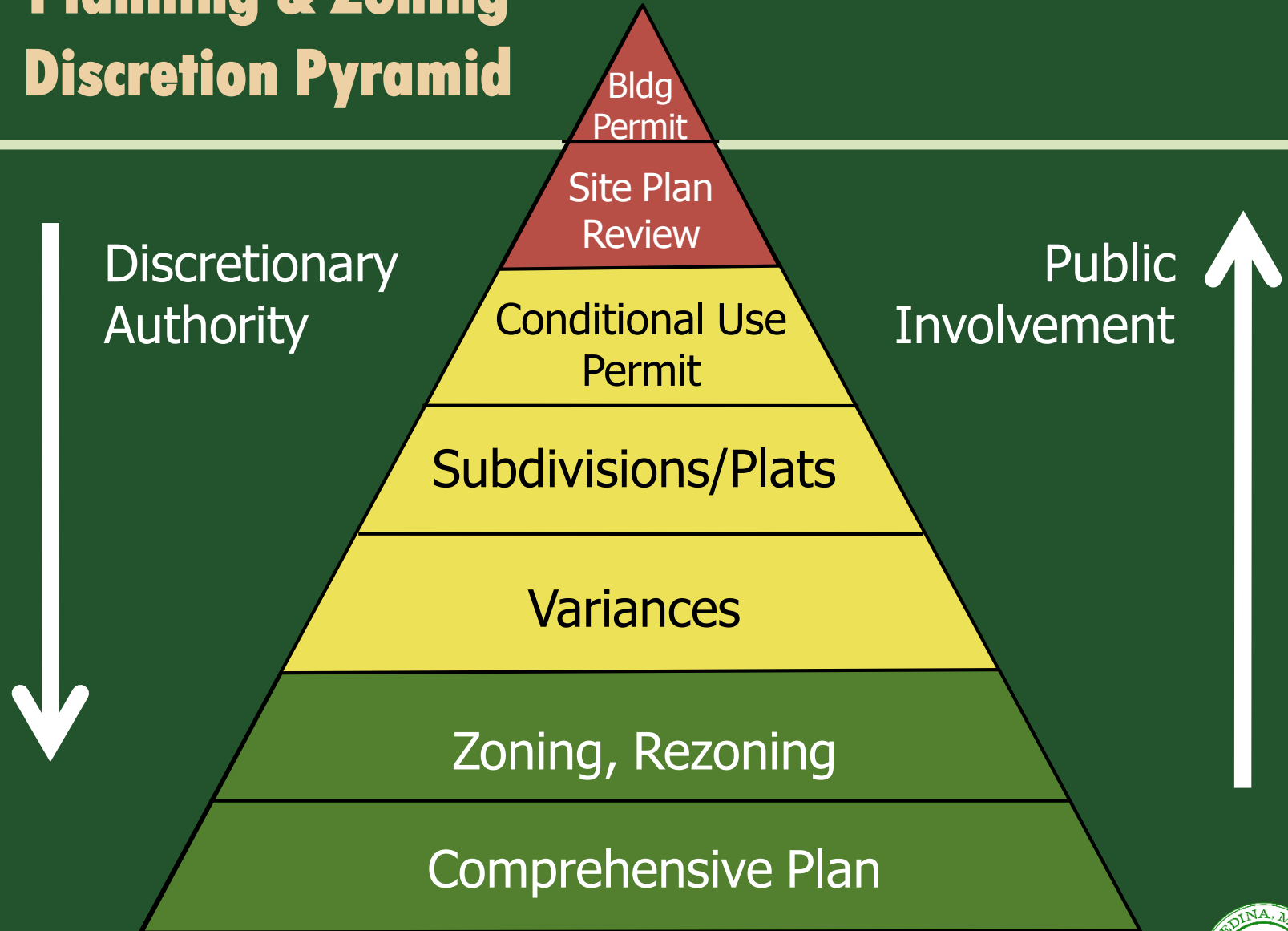


Summary

- Where we get authority to plan and zone
- U.S. Constitution
- What are the tools we use - Comp Plan, Zoning
- CUP, Variance, PUD, etc.
- Legal issues – Open Meeting, Findings, Conflicts
- Planning Commission role – Leadership, Discussion



Planning & Zoning Discretion Pyramid



Questions & Discussion



City of Edina
March 24, 2021

