Your Role as a Decision Maker

PLANNING COMMISSION TRAINING

AUGUST 30, 2023

Enabling Statutes

The Legislature (via the Municipal Planning Act) grants local authority to cities.

- As a political subdivision of the state, municipalities have *no inherent authority* over planning, zoning or land use regulation.
- Municipal Planning Act is the sum of municipal authority as it relates to planning and zoning – the MPA gives significant discretion to cities to manage planning and zoning matters, except where specifically limited.
- The legislature can specifically *limit* local authority.
  - Group homes are a permitted use by statute
  - Statutes restrict municipalities from granting a use variance

Exercising Authority

MAKING LAW (LEGISLATIVE AUTHORITY)

- Creating
- Adopting
- Amending Ordinances
- Engage in policy discussions, sort through competing views about what plans and laws would be in the best interest of the City, encourage public participation, rely and work collaboratively with staff to gather data.

APPLYING LAW (QUASI JUDICIAL AUTHORITY)

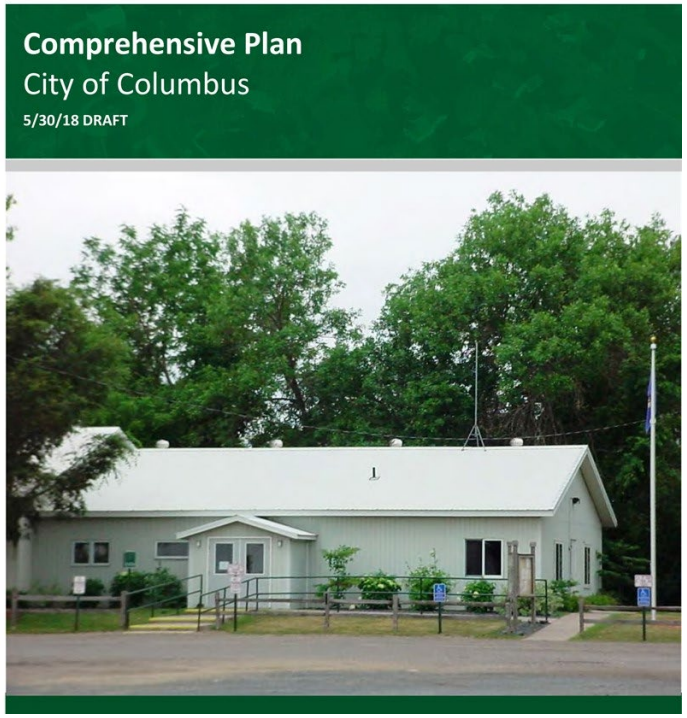
- Applying the Code as drafted
  - Limited task
  - Related to the facts presented at the public hearing and in the application
  - Apply the facts to the relevant law
  - Record matters
  - *This is the space where litigation occurs most often. A city has less ability to address the root of the dispute when applying law, than it does when making law.*

Exercising Authority

Comprehensive Plan

The comprehensive plan is an expression of the community's vision for the *future*- it is a strategic map to that vision.

- Prepared every 10 years
- Subject to review by Metropolitan Council
- Requires public hearings, the process for amending the comp plan is the same as for adoption.



Zoning Code and Ordinance Amendments

- Zoning ordinance is primarily contained in Section 7A of the City Code
- Legal Standard: Legislative Act
  - Rational basis
    - Is the proposed ordinance within the City's authority under the MPA?
    - Is there a rational basis- is the law reasonably related to the harm intended to be addressed? Does it serve the public health, safety, and general welfare?
    - Does the record support the legislation?
- Zoning laws cannot be changed ad hoc-
  - Must be amended according to state law (public hearing and notice) and procedure outlined in the City Code for amendments
  - Cities may enact an interim ordinance for a period of no more than 1 year (unless an exception applies) to allow for study of its zoning code.
    - Moratorium on Cannabis uses
    - Previous Moratoria
      - Dog Kennels
      - Commercial Industrial District

Conditional Use Permits

- Quasi-Judicial Authority- applying the facts to the law
  - Applying: General standards that apply to all conditional uses and specific standards that apply to a particular conditional use in a given zoning district
  - Why CUP? : hazards inherent in the use or special problems that the proposed location presents
  - City makes the legislative determination that the use is allowed with special conditions to mitigate impacts of the specific use.
    - Commercial Stables
    - Schools/Daycares
    - Industrial Uses
  - **If a proposed conditional use satisfies both the general and specific standards set out in the zoning ordinance, the applicant is entitled to the conditional use permit. If the applicant meets all the ordinance standards, the *city usually has no legal basis to deny the CUP.***
    - If the applicant can meet the conditions of approval, denial of the permit would be arbitrary. *Zylka v. City of Crystal*
    - Reasons for denial must be legally sufficient and supported by the factual record. *RDNT v. City of Bloomington*

Variance

- Legal Standard: Quasi Judicial
- Variance permits a departure from the strict enforcement of the ordinance as applied to a particular piece of property if strict enforcement would cause the owner “practical difficulties”.
- Practical difficulties:
  - Reasonable
  - Unique
  - Essential Character
  - *property owner proposes to use the property in a reasonable manner not permitted by the zoning ordinance; the plight of the landowner is due to circumstances unique to the property not created by the landowner; and the variance, if granted, will not alter the essential character of the locality. Economic considerations alone do not constitute practical difficulties*
  - Hillside example

Public Hearings

Local governments in Minnesota are republics *not* democracies

- Role of the public is to give input and information, not to make the decision
- Neighborhood opposition alone is not a sufficient basis to deny a project. Residents can often provide important facts to help the city address whether the application meets the standards, but unsubstantiated opinions and reactions to an application are not a legitimate basis for a CUP decision. If neighborhood opinion serves as the sole basis of the decision, it could be overturned by a court if challenged.

Preparing the Record: More is More

- Courts review decisions on the local record if the record is clear, complete and the municipal proceeding was fair.
- City should include all evidence and findings in support of its decision in the local record of its actions (*e.g.,* minutes, audio tapes, resolutions, etc.)
- The record includes:
  - Staff report and analysis
  - Public Hearing
  - Public comments submitted in writing
  - Application
  - Applicant's testimony
  - Council/Planning Commission discussion
  - Resolution of approval or denial

Procedural Safeguards: Due Process

- Goal: Conduct a fair proceeding and develop a clear and complete record
- Accomplished by:
  - Adequate notice of public hearings
  - Opportunity to be heard (reasonable limits, relevant testimony, consider a continuance if appropriate)
  - Maintain the Record (Maps, plats, surveys, studies, reports, letters, petitions, testimony)
  - Deliberate in an open meeting
    - No closed door discussions, briefings. Don't be afraid to question those presenting testimony.
  - Make your decision *based on the Record*
  - Make formal findings of fact why x applies to y here- no simple conclusions.

Making a Great Record

1. Identify the relevant legal criteria
2. Explain the relevant facts for the specific application
3. Show your work: don't just come to a result, explain the method of your reasoning in judging an application
4. Don't Assume: the court doesn't know much about the City or is specific needs, present a complete story ensure the whole picture is shared
5. Stay on Track: sometimes issues arise that don't relate to the legal standards, those are not relevant to quasi-judicial decision making. Standard+Relevant Facts is the formula
6. Beware Opposition: Neighborhood opposition is not enough- must have relevant facts that apply to the standards.
7. Avoid Bias

Bias and Due Process

- The right to due process, guarantees an applicant a right to an *impartial decisionmaker*
  - A Planning commission member made negative comments about the applicant and her request, referring to it as a "loophole in need of closing." The court determined the applicant was deprived of a fair hearing and required a rehearing without the participation of the member.
  - A county zoning committee member, who was also a town board chair, co-signed a letter as town board chair expressing his positive opinion of a gravel company. The gravel company later applied to the county for a conditional use permit and included the town chair's letter as part of the application. When the town board chair/county zoning committee member voted to grant the conditional use permit, the court determined he was an advocate who had demonstrated an impermissibly high risk of bias.

Why the Record matters?

- Constitutional protections are triggered with an incomplete record
- *IF the municipal proceeding was fair and the record is clear and complete, a court will limit the scope of any trial to the issues raised before the municipality AND will limit additional evidence at trial.*
- If the proceeding was not *fair* the court will allow parties to augment the record at trial *Swanson v. City of Bloomington*

Conflict of Interest

- Conflict of interest" is a common law rule which disqualifies public officials from participating in decisions in which they have a direct interest in the outcome.

- The purpose of the rule is to make sure that public officials' decisions are based upon the public interest and not upon their own personal financial interests.

- A direct interest has been defined by the courts as a large or substantial financial stake in the outcome which is different from the impact of the decision upon the taxpayer or citizen generally. Even the "appearance" of a conflict of interest has the potential for bringing the quality of public decision-making into disrepute.
- The conflict is not the problem. How public officials handle the conflict either solves or creates problems.
- For each decision, a decision-maker should:
  - Determine if they have a conflict of interest.
  - If a conflict is identified, the decision-maker should not participate in the discussions or the vote.
  - The minutes of the meeting should reflect this non-participation. (Many decision-makers leave the table.)