LE SUEUR PLANNING COMMISSION
City Council Chambers
203 South Second Street

MEETING AGENDA
Thursday, February 13, 2020
6 P.M.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes – January 9, 2020
4. New Business
   4.1. Commissioner Training – Planning and Zoning Basics
5. Other Business
   5.1 City Council Report
6. Miscellaneous
7. Adjournment

LE SUEUR PLANNING COMMISSION
MEETING MINUTES
Thursday, January 9, 2020

A meeting of the Planning Commission was held on Thursday, January 9, 2020 at 6 p.m. in the Council Chambers with the following Planning Commissioners in attendance: Jack Roberts, Melissa Huntington, Andrea Faches, Julie Sheehy, John Dieball and Dan Ryerson. Commissioners absent: Ryan Scherer. Samantha DiMaggio, Community Development Director, and Newell Krogmann, Council Liaison, were also in attendance.

A **motion** was made by Commissioner Faches, seconded by Commissioner Huntington, to approve the agenda as written. Commissioners Voting in favor: Roberts, Huntington, Faches and Sheehy. Commissioners Voting no: None. Motion carried.

A **motion** was made by Commissioner Huntington, seconded by Commissioner Faches to approve the minutes from November 14, 2019. Commissioners Voting in favor: Roberts, Huntington, Faches and Sheehy. Commissioners Voting no: None. Motion carried.

Commissioners Dieball and Ryerson joined the meeting at this time.

Item 4.1, Oath of Office and Introduction of New Members: Mayor Hagg was in attendance to give the Oath of Office to the Planning Commissioners and new members Julie Sheehy and John Dieball were formally introduced to the commission.

Item 4.2, Review of CSAH 22 Improvement Project: City Engineer, Cory Bienfang, provided the Commissioners with a project overview of the CSAH 22 Improvement Project. A **motion** was made by Commissioner Ryerson, seconded by Commissioner Melissa Huntington, approving that the proposed improvement plan is compliant with the 2040 Comprehensive Plan adopted by the City of Le Sueur.

Item 4.3, Review of Policy and Procedures: The Planning Commission reviewed the previously adopted Policy and Procedures. No changes were recommended at this time. The content of this document will be reviewed again in January 2021.

Item 4.4, Election of Officers: A **motion** was made by Commissioner Roberts, seconded by Commissioner Ryerson nominating Melissa Huntington for Chair of the Planning Commission. Commissioners Voting in favor: Ryerson, Dieball, Roberts, Huntington, Faches and Sheehy. Commissioners Voting no: None. Motion carried. A **motion** was made by Commissioner Ryerson, seconded by Commissioner Huntington nominating Jack Roberts for Vice-Chair of the Planning Commission. Commissioners Voting in favor: Ryerson, Dieball, Roberts, Huntington, Faches and Sheehy. Commissioners Voting no: None. Motion carried.

Item 5.5, City Council Report: Councilmember Krogmann updated that the Land Use and Transportation Plans are being worked on by the City Council.

A **motion** by Commissioner Dieball, seconded by Commissioner Ryerson to adjourn until February 13, 2020. Commissioners Voting in favor: Ryerson, Dieball, Roberts, Huntington, Faches and Sheehy. Commissioners Voting no: None. Motion carried.

Respectfully submitted,
Samantha DiMaggio, Community Development Director

City of Le Sueur Planning and Zoning Basics

Information for Planning Commissioners in the regulation of land use in Minnesota

Northwest Associated Consultants, Inc.

Table of Contents

Introduction

This material has been assembled as a "primer" on the basics of planning and zoning for Planning Commission members. The intent is to provide a usable background for typical planning and zoning issues faced by the City's Planning Commission.

Planning and zoning activities are conducted as a part of the "police powers" – protection of public health, safety, and general welfare. Because the way land is used by private property owners can affect other property owners and the public, courts have interpreted the "police power" to include the regulation of land use.

The City's authority to regulate land use is a power granted by the State government. The Legislature determines what powers the City has, and does not have. All of this power exists within the context of the U.S. Constitution which defines and restricts governmental authority.

Some of the most evident ways that land uses affect the public is through the need for clean water supply, sanitary waste systems, stormwater drainage, and the need for public street systems. In addition, private land use creates the need for fire protection and law enforcement. In short, private land development creates a significant demand on the public for services. As a result, the public has a significant interest in ensuring that land is used in a responsible and efficient manner.

Land use regulation is part planning theory and part property rights law. To help both public officials and citizens in understanding the complexities of land use regulation, we have compiled this material covering some of the most common planning issues that are faced by growing communities. This material does not cover everything, nor does it cover all aspects of each issue. Moreover, each community has its own set of specific regulations and requirements. Nonetheless, we hope that it provides a solid underpinning so City officials will feel comfortable addressing the situations faced on a monthly basis.

MEETING CONDUCT AND "ROBERT'S RULES OF ORDER"

Public meetings are conducted generally under "Robert's Rules of Order", often modified somewhat for convenience to allow a less formal meeting environment. The purpose of these rules are to create an orderly process for information gathering, public participation, and ultimately, decision-making. In most communities, the chair assumes a significant amount of latitude in modifying the strict rules, but should be ready to submit to a more formal process when preferred by the group, or at any time when better information will possibly result. A simple rule of thumb is to err on the side of better information, or more information, in determining the amount of formal process to apply to a given situation.

A typical meeting agenda will consist of the following:

A. Chair's announcement that the meeting is open – a "Call to Order"
B. Approval of Minutes of previous meeting(s)
C. Announcements, if any
D. Adoption of the Agenda (members have the opportunity to recommend the addition of items to the published agenda)
E. Consideration of Agenda Items
    a. Chair announces the agenda item
    b. Chair asks for a presentation of the Staff Report
    c. Chair asks for a presentation from the Applicant
    d. Chair opens the public hearing (this may be done on the initiative of the Chair (some jurisdictions hold a formal vote to open the hearing, but this is not required)
    e. Chair announces the format for public comment, including the following:
        i. Public comments must germane to the issue.
        ii. Speakers must address their comments and questions to the Chair and Commission, not to the applicant or other individuals at the meeting.
        iii. Speakers are directed to focus on new information relevant to the issue and avoid repetitive comments.
        iv. Audience must not interrupt the speaker with comments, applause, or other disruptions.
        v. Speakers must identify themselves by name and address, including representation of any interested party.
        vi. Speakers must speak from the microphone/podium to ensure that they are heard by Commission members, recording equipment, and those observing the meeting electronically.
        vii. Planning Commission members may ask questions of speakers while they are at the podium.
        viii. Answers to speakers' questions are typically held until all speakers have been heard. This rule is often modified to avoid many speakers asking identical questions.

f. Speaker testimony is taken as called on by the Chair – the City may require speakers to have signed in to speak, although this is often waived in smaller hearings.
g. Chair closes the public hearing at the end of public testimony (see item d. above). In the alternative, the Chair may ask for a motion to continue the hearing to a future specific time and date when additional information is required prior to Planning Commission action.
h. Discussion. Once the hearing is closed, the Chair invites members to discuss the issue. The purpose of discussion is to ensure that adequate information has been gathered to formulate a motion. The Commission may ask staff, applicant, or members of the public for clarification of specific points.

F. Following discussion, a motion for action on the item should be made. Motion may be to recommend approval, recommend denial, or to table action. If the hearing was continued (see g. above), a motion to table action would be in order. The Planning Commission should be aware of any "60-Day Rule" issues relating to the amount of time for a decision.
   a. A motion for action must be seconded. Occasionally, a member may request that a specific motion be amended to include additional language, such as a new condition or to refer to certain findings. For most circumstances, this is done by requesting that the motion-maker and the second accept a "friendly amendment", without separate votes on the amendment.
   b. If the motion-maker and/or second do not accept the "friendly amendment", a member may make a motion to have a formal vote to amend the original motion – this is a rare occurrence in informal meeting settings such as a Planning Commission.
   c. Once the language of the motion is agreed to, the Chair calls for a vote. For most zoning-related items, a simple majority of members present carries the item.
   d. Special situations:
      i. If a motion to ***deny*** or ***approve*** fails to receive a simple majority (either gains only a minority or ends in a tie vote), the Chair should declare that the motion fails, and ask those who voted against the motion to state their reasons on the record. Under this scenario, the item goes to the City Council without a recommendation from Planning Commission, with the stated reasons servings as the "findings".
      ii. In the alternative, a member may make a substitute motion and the Commission may consider it separately.

G. After all items on the adopted agenda have been disposed of, the Chair may entertain a motion to adjourn. This is considered a non-debatable motion, and should proceed directly to a vote after it has been seconded.

COMPREHENSIVE PLAN

The City's Comprehensive Plan is a document that describes the community's vision of itself in the future. The enabling planning statutes (found in Minn. Stat. §462.351 through §462.364) give a community the authority to plan and manage land use and related facilities (such as transportation, utilities, and other functions) to accomplish specific objectives. These objectives are quoted as follows:

> *The legislature finds that municipalities are face 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 open lands, and to promote the public health, safety, and general welfare.*

This statute recognizes that the development of land is not merely a private venture. Instead, private landowners create a partnership with the public to develop the land - the landowner provides the private land (as well as the capital to develop it) and public agrees to provide access to properly maintained roads, highways, sanitary sewer treatment, water supply, stormwater management systems, parks and recreation, police and fire protection, and other public functions. Because the public has such a great stake in the ongoing cost of serving private land, the legislature has granted communities the ability to plan for development and make sure that the public's costs will be manageable in the future.

The most recognizable component of the Comprehensive Plan is the Land Use Plan. This plan identifies various areas of the community as being guided for various types of land use, including land needed for public uses. However, the Comprehensive Plan is usually made up of many other important sections, including transportation and community facilities plans, housing plans, and natural resources plans, to name just a few.

Perhaps the most important (although often overlooked) chapter of the Comprehensive Plan is the statements of Goals and Policies of the community. This section really defines what is meant by all of the rest of the text and maps that comprise the Plan document.

In considering various development proposals, the Planning Commission and City Council should be able to identify specific goal or policy statements that they believe are accomplished by the project being presented. If a project cannot meet the goals and policies, it is a clear indication that the project is not consistent with the community's Comprehensive Plan (even if the land use is proper). At this point, the City needs to decide how the project should be changed to be consistent, or sometimes, whether the Comprehensive Plan needs to be considered for an amendment.

Rezoning and Zoning Amendments

Zoning Amendment - A change to *either* the text or the map of the Zoning Ordinance.

Zoning is the most commonly used technique in implementing the goals and policies of the Comprehensive Plan. The Zoning Ordinance is not a goal in itself - it should be thought of as the legal means of ensuring that the goals of the Comprehensive Plan are carried out by private landowners. Together with the Subdivision Ordinance, the Zoning Ordinance works to regulate almost all forms of land use and development. Whereas the Subdivision Ordinance regulates the conversion of raw land to a condition in which it is ready to be built upon, the Zoning Ordinance regulates the physical occupation of the land by a building or use.

Zoning Amendments are made in one of two categories: (1) Amendments to the text of the City's Zoning Ordinance, which apply generally; and (2) Amendments to the map, which apply to specific property. The City's Zoning Ordinance includes a section which establishes the process for adopting a zoning amendment, including the process and the standard for evaluating the merits of the proposed change. The most important standard: whether the proposed amendment reflects changes in the goals and policies of the Comprehensive Plan, or changes in the City.

The standards for considering the zoning amendment are generalized, and do not include details of a particular development scheme. It is not permissible to approve rezonings with conditions. Common rezoning criteria are as follows:

i. Traffic levels capable of being handled on existing roadways.
ii. Utility demands capable of being served with existing utility capacity.
iii. Land Use compatibility with adjoining property.
iv. Consistency with Land Use guide plan.
v. Environmental concerns (air, soil, water) and potential hazards to the public.
vi. Impacts on Schools, Parks or Open Space.

For the 7-member City Council such as Le Sueur's, a simple majority of at least four votes are necessary to adopt a zoning amendment. Where a member is absent, but otherwise eligible to vote, the requirements would remain four positive votes. Where the City Council has been reduced to fewer members by a vacancy on the Council, or a member who is considered ineligible due to a conflict of interest, the requirement is a simple majority of the remaining eligible members.

The rules relating to "super-majority" can be complicated when members are missing, or are ineligible due to conflict of interest. The City's Attorney should be consulted in these cases to ensure that the proper voting requirements have been met.
There are two planning and zoning votes that still require "super-majority", or 2/3 of the City Council. One is the adoption of a Comprehensive Plan or Plan amendment.

The second is a rezoning of property from residential to a commercial or industrial classification – all other zoning votes are now simple majority of the Council. The Planning Commission always acts on items according to its rules of procedure, which requires a simple majority vote, regardless of the subject matter.

It is important to note that zoning amendments are adopted by enactment of a new ordinance. This includes rezonings of property. The City needs to put the proposed amendment in the form of an ordinance, adopt it by the required vote, then publish it as with any other ordinance before it becomes effective.

Zoning amendments are occasionally litigated. The standard of review is "rational basis", a relatively low threshold legal standard that requires the City to be pursuing a "legitimate" governmental interest in a "reasonable" or "rationale" manner. The reasoning the City should use in making its decision is direction from the Comprehensive Plan. The factors listed above, and the quality of the record documenting the proposal's consistency with those factors, will often be determinative in legal disputes involving rezoning requests.

Conditional Use Permits

Conditional Use - A type of land use in a particular district which is presumed to be allowed, but requires special, additional standards and review due to the existence of some aspect of the use which may create a nuisance or place an extraordinary burden on public services.

Conditional Use Permits are, by far, the most commonly litigated zoning matter. Whereas the development of Comprehensive Plans allows the City to exercise the most discretion, Conditional Use Permits allow, typically, the least.

The typical judicial standard requires that the City issue the CUP if an applicant can show that all of the standards and conditions placed on the CUP have been met. (Conditions must be rationally related to the impacts of the proposed use).

The Zoning Ordinance applies two sets of conditions in the review of any Conditional Use Permit application - general conditions applying to all CUPs which serve as the basis for findings of approval or denial, and specific conditions listed with each individual use in the Zoning Ordinance district section.

The first set of conditions is as follows:

i. The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.
ii. The proposed use will not negatively impact nearby residential lands.
iii. The proposed action has been considered in relation to the specific policies and provisions of and has been found to be consistent with the Official City Comprehensive Plan and the intent of the Zoning Ordinance.

iv. Traffic generation by the proposed use is within capabilities of streets serving the property.

v. Adequate public facilities have been, or will be, provided.

The second set of conditions is often listed with the use in each district. The typical review will be whether the specific standards are met, then whether the general conditions are met. It is with this set of general conditions where the City may exercise some discretion, but only in the context of whether the conditions relate to an issue raised by the proposed use that affects the neighborhood and/or the Comprehensive Plan. Once granted, a Conditional Use Permit is considered permanent as long as the conditions are being complied with. There is no allowance in state law for a termination date (but see "Interim Uses" below).

The City can impose other conditions on the use, so long as those conditions are intended to correct a specific deficiency of the project that is within the City's regulatory authority. For instance, the City might choose to require specific landscaping requirements on a proposed use that creates an identified visual conflict with a neighboring use. However, the City could not arbitrarily decide to require a new business to restrict its hours of operation, unless the restriction was directly related to a specific public health, safety, or welfare issue.

In summary, Conditional Uses need to be addressed carefully, and the City uses most of its discretion in establishing the use in the ordinance. Additional conditions placed on such uses must be specific and tied to a quantifiable issue. Vague Conditional Use Permits create confusion for users, as well as for future Planning Commissions and City Councils in trying to fairly apply the regulations.

Interim Use Permits

Whereas Conditional Use Permits are considered to "run with the land" when all of the conditions are complied with, Interim Use Permits may be granted for a specified period of time. The municipality must be able to ascertain a specific date or event that will result in the termination of the IUP. The statutes require that the applicant must agree to any conditions deemed necessary by the municipality. As such, it is good practice to have a signed development agreement that specifies those conditions, including the termination date and/or event that memorializes the applicant's required consent.

Variances

Variance - An approved departure from the standard imposed by (usually) a dimensional zoning regulation, such as size, area, length, or bulk.

Variances are somewhat less likely than Conditional Use Permits to be the subject of litigation, because the City has more latitude to determine the meaning of the standard for variance approval, namely, the existence of "special conditions", and "reasonable use".

The most common challenge to variance decisions is based on "precedent" - whether the applicant is being treated similarly to like properties in like situations. This "precedent" issue is often feared out of proportion to its actual impact. The City's variance decisions that identify specific, unique, and relevant factors in either approving or denying variances rarely result in affecting a different property or request.

Variances are intentionally difficult to obtain, based on the premise that the City establishes zoning standards for the protection of public health, safety, and welfare. Therefore, a departure from the regulations should be considered rarely, only where unique, special conditions are apparent which would deny the applicant reasonable use of the land in question. If the circumstances are common, the City should consider enacting a regulation which applies to all properties rather than regulate by variance. If the regulations allow a reasonable use, the purposes of the ordinance are realized without the need for a variance.

It should be noted that while the Le Sueur ordinance currently uses the "hardship" standard for reviewing variances, this language was changed in State law a few years ago. The revised statutory requirement is now whether or not there are "practical difficulties" in using the property in a "reasonable manner". This statute was changed following a Minnesota Supreme Court case in which a City had utilized the wrong standard of review.

The primary considerations for variance review should be as follows:

A. A variance shall only be granted when it is in harmony with the general purposes and intent of the ordinance.

B. A variance shall only be granted when it is consistent with the comprehensive plan.

C. A variance may be granted when the applicant for the variance establishes that there are practical difficulties in complying with the zoning ordinance. Economic considerations alone do not constitute a practical difficulty. In order for a practical difficulty to be established, all of the following criteria shall be met:

    1. The property owner proposes to use the property in a reasonable manner. In determining if the property owner proposes to use the property in a reasonable manner, the board shall consider, among other factors, whether the variance requested is the minimum variance which would alleviate the practical difficulty and whether the variance confers upon the applicant any special privileges that are denied to the owners of other lands, structures, or buildings in the same district.

    2. The plight of the landowner is due to circumstances unique to the property not created by the landowner.

3. That the granting of the variance will not alter the essential character of the neighborhood in which the parcel of land is located.

D. The variance does not involve a use that is not allowed within the respective zoning district.

It is important to notice that each of these standards must be met in order to qualify for variance consideration. Variances should be put to this test rigorously in order that the City applies it ordinances equitably. Finally, the City may still deny a variance if despite these conditions, the result would be contrary to the Comprehensive Plan. However, where the refusal to grant a variance results in a situation which makes it *impossible* to use the land under the ordinance, the City may be found liable for a "regulatory taking", effectively requiring the City to compensate the property owner for the fair market value of the property.

It should be noted that the City uses the Board of Appeals and Adjustments to hear variances cases rather than the Planning Commission.

Findings of Fact

Findings of Fact - The legal, written substantiation for a land use decision.

One of the most critical factors in making land use decisions, whether rezonings, variances, conditional use permits, or subdivisions, is that the decision meets the legal standard for local government land use regulation. This is often called the "rational basis" standard of review. In short, a local government may regulate land use so long as the regulation bears a reasonable relationship to the attainment of a legitimate governmental interest. Violations of this test are often called "arbitrary and capricious".

For many land use decisions, there are numerous reasons the decision was made. Each of these reasons may be completely legitimate and based on evidence available to the Planning Commission or City Council. However, if a decision is challenged, a reviewing court will basically start over and allow the parties to debate the issue again if the City does not make its decision accompanied by written findings of fact. There are a number of standards to apply when making the findings:

1. Findings need to be made "contemporaneously" with the decision. The City does not have the latitude to decide an issue one month, then adopt formal findings the next. Recent court decisions have made it clear that the City needs to support its decision with findings at the time of the decision. This can make things difficult if the 60-day calendar is running out.

2. Findings need to be based on evidence submitted as a part of the City's hearing and application review process. This means that if the City is

going to decide a permit request based on a particular reason, that reason must have been a part of the debate or submissions made to the City. It does not necessarily have to have been brought up by the applicant. Planning Commissioners or Councilmembers may raise an issue during the debate, and having arrived at a conclusion based on that issue, may include it in the findings.

3. Findings need to be written. This means that the City should rely on a written record documenting the debate and the decision, and the record should include the findings. This may be in the form of a separate resolution, or it may be imbedded into the meeting minutes.

4. Findings should be as specific as possible. They should include references to specific policies or components of the City's Comprehensive Plan or a specific ordinance standard. Vague findings may be better than none, but only a little better.

If a City makes clear, written, contemporaneous findings of fact with their land use decisions, a court will most often rely on the City's record in reviewing a challenged City decision. And, if the findings meet the rational basis test, the City's decision will most likely withstand challenge.

One note on findings to be aware of – public comments can constitute findings insofar as they report on observable conditions that are relevant to the proposed request, but NOT only based on whether members of the public like or dislike a proposal. Various zoning decisions have been overturned by the Courts when the City uses public opinion only as the basis for a zoning action.

"60 Day Rule"

This rule is a statute (Minn. Stat. §15.99) which requires local governments and state agencies to respond to zoning applications within (usually) 60 days of application. There are a number of complications to this law.

1. The City has 15 days from the time that an application is made to determine whether or not the application is *complete.* The City must notify the applicant within this time period of any incompleteness. The 60 day period does not begin until the application is complete. However, if the City does not notify within the first 15 days, the calendar starts running as of the original date of submission.

2. If the City cannot, for almost any reason, come to a final decision prior to the end of the first 60 days, it may extend the review period by an additional 60 days if the applicant is notified in writing prior to the expiration of the first 60 day period. There appears to be little constraint on the "quality" of the reason - a simple explanation that the City's review

schedule does not permit adequate time for the City Council to act properly on the item is sufficient.

3. The City cannot "automatically" notify the applicant of a 60 day extension. The City is required to review the application enough to make a reasonable determination that the first 60 days will be inadequate. Therefore, a separate letter should be sent after the material is received.

4. If the City reaches the end of the 120 day review period, including a noticed extension, it must make a final decision, or the application will be considered approved *as submitted*. For complex projects, negotiations often occur between the City and the applicant, and can take several weeks. Most Cities will ask the applicant to sign a form letter waiving the 60-day rule if a decision can not be made. The City can be quite persuasive with this request as the alternative to further consideration is usually to deny the proposal.

5. Subdivisions have their own 120 review calendar listed in the Statutes, without any reference to a 60 day period.

6. Cities are required to notify an applicant in writing of a denial of a permit, including the reasons for denial. This notice is required to be provided within the statutory period. It is a safe assumption that approvals *with conditions* must also be notified in this manner.

The 60-day rule is not necessarily difficult to comply with, but it requires attention to avoid a trap of automatic approval. The safest option is to be careful with the application package and notify the applicant of deficiencies in the application to delay the start of the calendar.

For multi-part applications, it is best to require that each part is a separate application. For instance, with Planned Unit Developments, the ordinance provides for a Concept Stage review, Development Stage review, and Final Stage PUD. For complex projects, there is no way that the project can be submitted, reviewed, revised, and reviewed again within the full 120 day period. As such, most Cities separate the stages into distinct applications.

This issue is worthy of some review by the City Attorney due to recent Court decisions that appear to aggregate complex developments into a single linked application.

Subdivisions and Plats

Subdivisions are any division or combination of land parcels. A "Plat" is a specific type of subdivision that involves the filing of new title information with the County Recorder that results in all future legal descriptions referring to the Plat, rather than historical description information.

There are generally three types of subdivision actions that a City will consider. The simplest is sometimes referred to as an "Administrative Subdivision". These actions involve lot combinations and lot line adjustments. The next simplest is a "Metes and Bounds" subdivision whereas an applicant may create five or fewer parcels – these subdivisions can proceed with Planning Commission and City Council review, but without the full requirements of a formal "plat".

Administrative and "Metes and Bounds" Subdivisions are commonly permitted by what is referred to as a "Metes and Bounds" certificate of survey. These surveys are prepared by registered surveyors and include a map of the property and a legal description that provides an exact description of the parcel or parcels in question. The survey will usually show lot dimensions, existing buildings, and existing easements that may exist on the property.

A metes and bounds subdivision may be processed using a "Registered Land Survey". This is a legal method of subdivision for registered property, also known as "Torrens" property. Torrens parcels are registered with the County and have had new registered title certificates prepared. These are in contrast to the more common "Abstract" property, in which an abstract of the title to the property exists that lists the chain of title back to its original conveyance (usually from the United States government).

The third type of subdivision is the Plat. Platting re-titles the subject property into new lots and blocks, and eliminates previous underlying lot lines (it should be noted that existing easements and streets need to be separately vacated). The platting process typically consists of a Preliminary Plat and a Final Plat. In many instances, a City will ask for a sketch plan for preliminary concept review, prior to a formal Preliminary Plat application.

An approved Preliminary Plat conveys specific rights to a property owner, and as such, should be reviewed carefully. This stage of review will usually include a plat drawing showing the layout of the subdivision; a grading and drainage plan that identifies the changes to the existing grade and stormwater management impacts; a utility plan that provides for preliminary sanitary sewer and water designs; a street plan that identifies the street profile; and a landscaping plan that identifies new landscaping and erosion control planting in the subdivision.

Minnesota courts have determined that the approval of a Preliminary Plat gives the developer a reasonable expectation that he or she will be able to develop the

property as proposed. It is common for small adjustments to be made between the Preliminary Plat and the Final Plat, but the City needs to make sure that it has addressed all of its major issues in its review and approval of the Preliminary Plat. Because many Preliminary Plats get approved with a number of technical conditions, it is usually a good idea to require that a revised and corrected Preliminary Plat is submitted for City records and reference.

There are several issues to look for when reviewing new subdivision proposals:

1. Does the street system provide for an adequate number of new and future street connections to surrounding land? If the street design creates a high number of trips past some lots, additional street connections should be considered. As a general rule, more connections result in better and more even traffic distribution. Cities often hear people argue for fewer connections over fear of increased traffic. The opposite may be actually the case.

2. Does the regional street system support the number of lots in the subdivision, or should a new collector route be considered in the area?

3. Does the design of the individual lots allow for comfortable building placement? Occasionally, lot designs may meet the City's technical regulations, but due to unique considerations, result in difficult building sites. Most cities consider newly platted lots to be "variance-proof", that is, there should be no need to consider variances to make reasonable use of a new lot – it is presumed to be buildable as approved.

4. Does the subdivision make reasonable consideration for the existing character of the land? Heavily graded projects, woodland areas that are being eliminated for additional lots, elimination of significant views of surrounding countryside or water features, or other similar characteristics indicate a subdivision that is, perhaps, not making the best use of the property. The City has a stake in managing these issues in the quality of the neighborhoods that will house its future residents.

5. Does the subdivision minimize the impact on the City's utility and maintenance system? Some subdivision designs can make it difficult for the City to serve the project once constructed. Issues such as snow-plowing, maintenance access to stormwater ponding areas, fire-fighting capability, access for emergency vehicles, and other issues need to be considered to ensure the protection of the City's future residents. It is tempting to think of the subdivision's defects as the problem of the developer in selling the lots. But these problems will become the City's when the future new residents raise concerns over poor design.

6. What kinds of public use might be necessary in the subdivision, or in the area? Should the City require a dedication of park land or trail right of

way? Is there a need for the construction of sidewalks or other improvements not commonly found in other areas?

7. What kinds of ideas might improve the livability of the subdivision? How can the existing landscape be capitalized upon to ensure the best neighborhood? Or, what additional amenities might be considered to improve the area?

PLANNED UNIT DEVELOPMENT

Planned Unit Development is a zoning technique that permits a developer and City to negotiate the applicable zoning standards for a project. PUD implies a number of elements in any project design:

a. The City will allow flexibility from some of its zoning standards, in exchange for a higher standard in other areas.

b. The flexibility is intended to result in a project of superior design and amenity than would otherwise be likely if basic zoning regulations were to be applied.

c. PUD is not intended to be used as a method of merely skirting around inconvenient regulations.

d. The process is designed to allow for the integration of several disparate project elements, resulting in better coordination of public facilities, and hopefully, more efficient use of land and public resources.

e. The process ends with a development contract that becomes the adjunct Zoning Ordinance for the construction of the project.

In Le Sueur's zoning ordinance PUD is applied through the consideration of a Conditional Use Permit allowing the use of PUD flexibility on a development parcel, keeping the underlying zoning district in place. In this type of PUD, the base zoning district regulates the allowable uses in the district and sets out the general conditions. The site plan and other documents are then used to identify the areas where flexibility is being approved.

In some zoning ordinances Planned Unit Development projects can be considered by the City writing a customized zoning ordinance that applies only to a specific "PUD" zoning district. This custom ordinance will list which uses are allowed, what development standards apply, and any other requirements of the district. While this sounds complex, most PUD District ordinances refer to some other existing zoning district, and then list only additions or deletions.

For many PUD projects (especially residential projects), one of the most common areas of flexibility requested is for the use of private streets. With private street

design, an association is formed of the owners in the project, and the association becomes responsible for street maintenance, and many other aspects of project operation. For a developer, the advantage of using a private street design is a marked increase in potential density. Setbacks from the edge of a private street need not be a strict as might be typical with public streets, and the street itself will typically require about half of the area of a public street right of way. The City should feel confident in requiring significant upgrades to the design and amenity package of such a PUD, given the increased density that usually accompanies this type of project.

The key for the successful use of Planned Unit Development is to be able to identify the specific, tangible benefits from the use of PUD design. These benefits may include upgraded architecture (both building design and materials), significantly increased landscaping, or additional open space offsetting greater building density. In many cases, the developer may be adding specific amenities to the project, including recreational facilities, or similar elements. When these types of "upgrades" can not be easily identified, the City should reconsider the flexibility being requested by the applicant.

Nonconformities

A common issue that faces Planning Commissions in the application of zoning regulations is how to treat existing buildings or land uses that are no longer allowed by newer zoning requirements. Such buildings and uses are called "nonconformities" and have specific rights under State law.

Until recently, the municipality applied a "50% Rule" to all nonconformities. Under this rule, a community was permitted to require that and existing nonconformity be removed and replaced only by a fully conforming use if it was destroyed by more than 50% of its value. Thus, a property owner who lost most of a building through damage by storm, accident, or even one's own demolition, was required from that point on to comply with the current zoning requirements.

The newer statutory rule expands the rights of the owners of nonconformities. The Statute explicitly provides that nonconformities may be replaced or improved, but not expanded, so long as the owner has applied for a building permit within six months, and completed the work within twelve months. After this timeframe, the 50% Rule comes back into play.

There are specific exclusions for Floodplain nonconformities that should be checked out when applying this relatively new language.

ANNEXATION

Not technically a "planning and zoning" issue, annexation is nonetheless an important factor for communities like Le Sueur in managing growth and development. Annexation is a discretionary decision on the part of the City. While the interests of the Township government and subject property owners can affect the process, a City can not be forced to accept an annexation (the State theoretically could, but this would be extremely unusual).

The State of Minnesota sets out annexation rules in Chapter 414 of the State Statutes. There are essentially three types of annexation:

1. Orderly Annexation
2. Annexation by Ordinance
3. Contested Case Annexations

With Orderly Annexation, the City and Township establish a set of conditions under which annexations can occur. These conditions usually include rules about contiguity and the ability to serve the site with public utilities. Other common conditions include specific geographic areas that are eligible or off-limits, and whether the City will provide a fee to the Township to mitigate the Township's loss of tax base.

Orderly Annexations can occur one at a time, with an agreement reached between City and Township as each property comes up, or, more comprehensively – subject to a larger Orderly Annexation plan. In either case, the City and Township will create an agreement and a joint resolution effecting the annexation. The resolution is forwarded to the State of Minnesota Department of Administration's Office of Municipal Boundary Adjustments for certification.

The second type, Annexation by Ordinance, is an annexation decision between the City and the property owner. There are a few specific conditions to Annexation by Ordinance, in which case no direct Township involvement occurs. These conditions include:

a. The subject parcel is no more than 120 acres in size;
b. 100% of the property owners of the parcel in question petition for the annexation; and
c. The subject parcel is contiguous to the current City limits.

When these conditions are met, the City can call for a public hearing to annex the parcel through the adoption of an Ordinance. The Township may object to the annexation during the hearing process but does not have the authority to "veto" the decision. If the City adopts the ordinance in compliance with the statutory requirements, the State's Office of Municipal Boundary Adjustments then certifies the annexation.

The third type of annexation is sometimes referred to as a "contested case" annexation. In these situations, the City is considering an annexation that does not comply with the Annexation by Ordinance rules, and the Township will not agree to a joint resolution or "Orderly Annexation". Contested Cases are treated like trials, held before an Administrative Law Judge. Prior to trial, however, the City and Township must conduct a series of negotiation sessions to attempt to come to an agreement.

If no agreement is reached, the judge reviews the evidence presented, and rules based on specific criteria laid out in the statutes. These criteria are centered around whether or not the area "is or is about to become urban or suburban in character". This phrase is somewhat ambiguous, however. As a result, Cities most often support their contested case annexations with studies demonstrating growth demand and shortage of available land area, and the cost of providing services to unincorporated areas. These trials have become relatively rare, and are very expensive and time consuming.

One additional point about annexation policy relates to the City's ability to recover the costs of growth. Once a property has been annexed, the fees charged for development services (such as sewer and water extensions, road improvements, etc.) must meet specific and strict statutory requirements for "proportionality" to the impacts created by the development. However, property owners do not have any implicit right to annex into a City. As such, the City can negotiate a development fee agreement with the owner/developer of annexing land to cover extraordinary costs that would otherwise be spread to the general City taxpayer. This is an important factor to remember when considering annexation agreements and requests.

Park Planning

Cities have a statutory right to require that subdivisions provide park land, or at the discretion of the City, cash in lieu of land, to facilitate the development of the City's parks system. Le Sueur's Park Fee is listed in the zoning ordinance as a fee paid with building permits. While cash-in-lieu of park land can be collected at the time of a building permit application, there is a potential conflict in the statutory requirements that Park Dedication is authorized as a subdivision function.

In the Subdivision Ordinance the City commonly specifies the authority to require that developers of land provide either land for the park system or money to purchase new land for the park system. When a subdivision comes forward, the Park Commission is tasked with the review of the development to determine what type of contribution should be made. Typically, the review consists of determining whether or not the City will require park land to be dedicated based on if there is a future park planned for the specific location.

State Statutes authorize Cities to do this. However, the State requires that the City have a park plan and ensure that the money and land received is used for the purposes intended, and that the land or cash is proportional to the demand created by the new project. The money is required to be kept in a special park fund that can only be used to purchase or equip parks.