
TOWNSHIP HEARINGS

---A General Overview---

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INTRODUCTION

Township hearings are essentially of two types -- those required as part of a statutory procedure (referred to in this paper as “statutory hearings”), and those conducted merely to exchange information (referred to in this paper as “informational hearings”). It should be noted that these labels are used only for convenience and are not necessarily terms of art used by attorneys or the courts. Even though both types of hearings involve the exchange of information, the differences between them are important.

Statutory hearings are a vital part of the process to which they are attached. Examples of issues requiring a hearing, or the right to a hearing, include: the special assessment procedure; adoption and amendment of zoning ordinances; the tree removal procedure; and road and cartway establishment, alteration, and vacations. Without a properly conducted hearing, or, as the case may be, fair access to a hearing, these processes would fail for a lack of due process. Failure to afford someone proper due process can invalidate an action or process as violating on both the state and federal constitutions. As such, the need to carefully follow the correct procedure in calling and holding a statutory hearing is extremely important.

It is possible for a local ordinance to establish an administrative process that may require a hearing in certain circumstances. In these cases, the procedure provided in the ordinance is followed as if it were a statutory procedure. Since ordinance hearings are conducted with the same formalities as a statutory hearing, they will not be discussed separately in this outline.

Informational hearings, on the other hand, are not a necessary part of a statutory procedure. These hearings can be called, upon sufficient notice, at anytime for any reason. Because the open meeting law applies anytime a quorum or more of the supervisors are gathered to discuss, decide, or receive information regarding town business, the requirements of the open meeting law must be followed when calling and conducting an informational hearing. Informational hearings serve basically two purposes. The first is to provide information to the public. The other is to allow the board to receive comments and information from the people of the community. An example of an informational hearing serving both purposes is a hearing called to receive input on whether the township should consider local planning and zoning. The town board could use an informational hearing to both provide factual information regarding the benefits and costs of local zoning and to receive initial reactions from citizens.

Since informational hearings are not controlled by statute, there are no set procedural standards that must be followed beyond those required by the Open Meeting Law.¹ However, it is strongly recommended that the structure for statutory hearings discussed below also be used for informational hearings.

For the sake of this outline, the examples provided will focus on planning and zoning activities under Chapter 462 of the statutes. However, the information is relevant to all town hearings. Furthermore, “board” will be used in this discussion understanding that hearings

related to township matters can be conducted by bodies other than the town board (e.g., planning commissions). Remember, you must be certain to follow the specific hearing requirements of the particular activity in which you are engaging.

I. STATUTORY HEARINGS

A. Calling a Statutory Hearing

1. Statutory Requirements: Each statutory procedure requiring that a hearing be held or offered provides a specific procedure that must be followed in calling the hearing.

a) Example: Amendment to a zoning ordinance

(1) An amendment can be initiated by the town board, the planning commission, or by petition of affect property owners as defined in the zoning ordinance. If the planning commission did not initiate the amendment, a hearing cannot be held on the amendment until it is referred to the planning commission for review and comment or until 60 days have lapsed from the date of reference without a report by the planning commission.²

(2) Once a proposed amendment is eligible to be acted on, it cannot be adopted until a hearing is held. At least ten days before the hearing, notice of the time, place, and purpose of the hearing must be published in the town's official newspaper, a similar notice must also be mailed at least ten days before the day of the hearing to each owner of affected property and property lying wholly within 350 feet of the property to which the amendment relates. A copy of the notice and a list of those receiving mailed notice must be attested to and made a part of the record of the proceedings.³

b) Notice of the hearing must identify it as a "hearing." A statutory hearing may be part of a regular meeting but the notice must inform the public of when and where the hearing will take place so the public has the opportunity to present its views.

c) Published notice must be in a qualified newspaper of general circulation in the town. The publisher will be able to tell you if the paper is "qualified" under the statutes. In fact, when you present a legal notice for publication the paper has an affirmative duty to notify you that it is not a legal paper.⁴

d) When notice is published, be sure the paper provides an affidavit of publication. When notice is served in person or is mailed, be sure an affidavit of personal service or service by mail is completed. Affidavits should be presented to the board at the outset of the hearing. These affidavits allow the board to demonstrate that adequate notice was provided.

(1) Certified or registered mail should be used when providing notice by mail. The return receipt should be attached to the affidavit of service by mail.

(2) The affidavits and copies of the notices should be kept on file for at least two years.

2. Local Standards: It is possible for the board to set standards more stringent than those required by statute. For example, in the above discussion of amending a zoning ordinance, a township could have in its ordinances the requirement that all owners within 500 feet (instead of 350 feet) receive mailed notice of the proposed amendment. Of course, the board is prohibited from adopting standards that are less restrictive than or inconsistent with the controls adopted by the county or those contained in the statute. (See Minn. Stat. § 394.33) Furthermore, if more stringent requirements are established, the board is obligated to follow them as if they were required by statute.

3. Separate Hearing: A hearing must be held separately from a meeting. It is permissible to hold a hearing on the same day as a board meeting, but they must remain separate. Many boards choose to hold their hearings immediately before or after a regular board meeting in order to hold down costs.

a) A hearing cannot be held on a legal holiday, after 6 p.m. on the day of a major political party precinct caucus, or between 6 p.m. and 8 p.m. on elections days.⁵

4. “60 Day Rule”: Anytime a hearing process involves consideration of “a written request relating to zoning, septic systems, or expansion of the metropolitan urban service area for a permit, license, or other governmental approval of an action,” timing becomes critical. (footnote: Minn. Stat. § 15.99, subd. 2.) This request must be approved, denied, or consideration of the matter properly extended within 60 days from receipt of a completed written request or they are automatically deemed approved. To extend consideration of the matter for up to an additional 60 days, the local government must send written notice to the applicant before the end of the initial 60-day period explaining the reasons for the extension.

B. Conducting a Hearing

1. Structure and Rules

a) There is not a uniform structure or set of rules that the board must follow in conducting a hearing. The board has the authority to establish the agenda and the rules of parliamentary procedure for its hearings. However, it must be kept in mind that the fundamental purpose of hearings is to afford due process to interested parties by allowing them the opportunity to speak on the issue in question. (See the following recommendations regarding the opening statement for some ideas on what areas should be covered by the rules).

b) Recommendations:

(1) Chairperson: The chair is the appropriate person to conduct the hearing. The chair is responsible for upholding parliamentary rules, applying those rules fairly to all, and maintaining a perception of control over the hearing at all times. The hearing is opened by the chair and it should begin with the chair reading an opening statement.

(2) Opening Statement: The following points are examples of what can be included in the opening statement.

(3) The purpose of the hearing is to _____ (explain) _____.

(4) Discussions will be limited to the state purpose of the hearing.

(5) Anyone wishing to comment or ask questions will be allowed to do so.

(6) No speaker will be permitted to speak more than twice except to answer a question from the board.

(7) Each speaker will be limited to a total of _____ minutes.

(8) No applause or interruptions are permitted.

(9) All comments must be directed to the chair. [The goal of this point is to increase order and reduce personality conflicts.]

(10) Each speaker must state his or her name, address, and the group he or she represents (if any) before speaking. [Some municipalities require a card asking for this information to be

completed and presented to the board before the person is allowed to speak. This information is very helpful in developing the record of the hearing. If groups are represented, the chair should try to promote a balanced presentation by making sure equal time is given to all sides. Each group may be willing to have a representative present the views of its group -- this will likely reduce the length and redundancy of the testimony.]

(11) Because the meeting is being taped, each person wishing to speak or ask a question must step to the _____ (podium, microphone, front of the room, etc.).

(12) The board may ask questions of the speakers.

(13) The board may recess the hearing to another date and time in order to properly hear all those concerned, collect further information, or make a final decision. [Before a hearing is recessed be sure to announce and record the date, time, and place of the reconvened hearing.]

2. Procedural Rules

a) The board may adopt its own rules of parliamentary procedure. The statutes do not provide any guidance in this area and the books on parliamentary procedure do differ on certain points. Therefore, either set your own rules, specify and adopt a particular book of rules (e.g., Robert's Rules of Order), or use a combination of self-drafted and published rules. While permissible, simply adopting an established book of rules is not recommended. Most books on parliamentary procedure are complex and can cause more problems for boards than they solve.

(1) When compiling and developing rules, keep in mind that the board is also empowered to adopt parliamentary rules for its board meetings. One set of rules can be adopted to apply to both situations and may contain comments to cover any distinctions on the application of the rules between hearings and meetings.

(2) Once the rules are developed, they should be adopted by resolution and then posted on the towns bulletin board, in the town hall, and copies should be made available at the hearings. It is critical for the board to understand all of the rules adopted and to consistently follow them. Failing to do either could negatively impact the fairness of the proceeding.

(a) Two popular books of parliamentary procedure are:

- (i) Robert's Rules of Order.
- (ii) Sturgis, Standard Code of Parliamentary Procedure.

(3) There are many other books on this topic so do not feel limited to these two. Larger bookstores should either have books on parliamentary procedure in stock or be able to order them for you.

3. Fairness

a) A primary goal and challenge in developing the rules for a hearing is to produce a fair process. Whether the proceeding conducted by the board was fair is one of the issues courts will consider when a board's decision is challenged. Treat all sides to an issue consistently and fairly, regardless of your personal opinions.

4. Need for an Accurate and Complete Record

a) Creating an accurate record of the hearing is vital to success if the board's decision is appealed. In Swanson v. City of Bloomington, 421 N.W.2d 307 (Minn. 1988) the Minnesota Supreme Court held that where a municipal proceeding was fair and the record clear and complete, the review of the proceeding will be "on the record." This means the court will make its decision based on the record of the hearing and not allow the challenging party to add to that record. Limiting the appeal in this way substantially reduces the burden placed on the board to prove factual matters.

b) Recommendations:

(1) Tape record all hearings. The tapes should be preserved, as part of the permanent record. This, of course, means the board will need to provide for a tape recorder, a microphone(s) for the board and the public speakers, and a safe place in which to store the tapes.

(2) A written record (minutes) must also be kept during the meeting. If a hearing is challenged, a detailed transcript will likely be developed from the tape.

(3) Be sure to collect and preserve all documents presented or referred to at the hearing. A motion should be made to enter the documents into the record of the hearing.

(4) The board should provide a safe place in which to store its records (i.e., a fireproof file).

(5) Information the board gathered prior to the hearing and the facts learned at the hearing, and references to the applicable statutes and ordinances should be developed into findings of fact.

5. Findings of Fact

a) Another important aspect of conducting a hearing is to prepare findings of fact. Findings of fact are a synopsis of the facts and law the board will use to make its decision. These are needed because issues of fact are almost always arguable. While it is important for the board to initially hear those arguments, ultimately the board must decide on and document those facts it will use to make its decision.

b) At a minimum, the reasons for the board's decision must be recorded and in more than just a conclusory fashion.⁶ Failure to record the rationale for a decision creates a legal presumption the decision was not proper.

c) If properly developed, the findings can be very important in supporting your decision if it is challenged. However, if the findings are not well thought out and developed, they can be used as a powerful tool against the board.

d) Recommendations:

(1) The findings must be complete. At a minimum they should identify the issue in question, the parties and property involved, the date when the hearing was held, the essential facts needed to reach a decision, references to the applicable law, and an explanation of the reasons for the decision.

(a) Be sure that all of the facts necessary to make a decision are collected and the related questions answered before a decision is made.⁷

(2) Be aware that the statutes often require that certain stated conditions to exist before an action can be taken. For example, before a variance to a zoning ordinance can be issued the board must find, among other things, that strict enforcement of the ordinance in the particular situation would cause "undue hardship" to the owner.⁸ Because of this requirement, factors related to the existence of an undue hardship must be included in the findings of fact and are determinative of the final decision.

(a) These required conditions can be drafted into a series of questions that are asked, answered, and incorporated into the findings of fact at the hearing.

(3) The administrative information, the findings of fact, and the board's recommendations should be incorporated into a single document. The document should be supplemented with a listing of the procedural steps taken by the board (e.g., when the various notices were published, when the planning commission made its report, etc.).

(4) If the board intends to rely on the findings developed by another body (e.g., planning commission), it is important for the board to document that it agrees with and adopts the findings. It is also very important to carefully document those findings with which the board does not agree, the reason for the disagreement, and the alternative findings.

6. Decision Making

a) Decisions on the hearing topic are to be made by the board based on the facts before it. The opportunity the people have to speak is intended to bring facts to the attention of the board to assist in making an informed decision. Those attending the hearing are not given a vote as at the annual town meeting.

b) The board can make its decision at the conclusion of the comment session or it can recess the hearing and decide the matter at the continued hearing. It is possible to end the hearing and make the decision at a subsequent board meeting. However, normally the decision should be made as part of the hearing. In this way, the decision is part of the same proceeding and the record is complete.

c) If a hearing is to be continued, be sure to announce and record in the minutes the time and place of the reconvened hearing before the hearing is recessed. If this step is taken, additional notice is not required before the hearing is reconvened.⁹ If the time and place was not properly established before the hearing was recessed, the notice originally required to call the hearing must again be provided. Even if the information was stated before the hearing was recessed, it is recommended that some additional notice be provided as a reminder.

d) All documents related to and generated by the hearing must be compiled and properly stored.

7. After the Hearing

a) Be aware that once a hearing is complete, the statute may require the board to take additional steps. In some cases the required action must be done within a certain time after the hearing. Failure to meet the stated deadline could invalidate the hearing.

b) Plan for these steps in the initial stages of preparation for the hearing. Be sure the person responsible for completing the action is identified and made aware of the requirements prior to the hearing.

c) Example: Filing zoning ordinances

(1) When a township adopts or amends its official controls it is required to file a certified copy of the ordinance, map, etc. with the county recorder or register of titles.¹⁰

II. INFORMATIONAL HEARINGS

A. Purpose

1. Informational hearings can be called for any public purpose. These hearings can serve as a very valuable forum for collecting and disseminating information.

a) Example: Developing a comprehensive plan

(1) In the initial stages of developing a comprehensive plan, the board may decide to call an informational hearing to present what it has developed to that point and to receive public input. This is not the hearing required to be held before a plan is adopted,¹¹ but is simply an opportunity to exchange information.

B. Procedural Considerations:

1. **Statutory:** Since informational hearings are not based on a specific statutory procedure, the open meeting law provides the only required steps in calling these hearings. The open meeting law does not specifically address notice requirements for hearings; however, as a gathering of the public in which a quorum of the board is present to discuss township business notice is required. It is recommended that at least 10 days published notice of the date, time, place, and purpose of the hearing be provided. At least four days posted notice must also be provided.

2. **Formality:** The same level of procedural formality associated with a statutory hearing need not be followed for informational hearings. For instance, a

board may choose to simply keep a written record rather than tape recording the informational hearing. However, the basic structure discussed above should be followed whenever holding an informational hearing. Furthermore, the board may want to conduct their informational hearings with all the hearing formalities as a means of preparing for statutory hearings.

WORKSHEET
--Preparing For a Hearing--

Note: This worksheet contains only recommendations and is not based on a specific statutory procedure. Each type of hearing may have a unique set of requirements based on the particular statutory authority. Always be sure to seek appropriate legal assistance before conducting a hearing.

1. _____ Identify the appropriate statutory procedure.
 - Zoning (Minn. Stat. § 462.351 - .365)
 - Special assessments (Chap. 429)
 - Road establishment or vacation (Minn. Stat. § 164.07)
 - Cartway establishment (Minn. Stat. § 164.08 & 164.07)
 - Tree removal (Minn. Stat. § 160.22)
 - Informational
 - Others

2. _____ Are you at the appropriate stage in the statutory process to call a hearing?
 - Records are being kept on the various stages of the process to be incorporated into the findings of fact.
 - Legal assistance has been obtained to the extent necessary.

3. _____ Notice of the hearing required by the particular statutory procedure is provided.
 - _____ days published notice in a qualified newspaper.
 - _____ days mailed notice.
 - _____ days posted notice.

4. _____ The related affidavits of publication and/or service are completed and are on record with the board along with copies of the notices.

5. _____ Information is gathered in preparation for the hearing.
 - The role of the board is defined and understood.

Persons needed to present information and/or answer questions area asked to attend.

Parliamentary rules were established and copies will be made available at the hearing.

Information collected and recommendations made by other bodies involved in the matter are gathered and have been or are ready to be reviewed.

An opening statement is prepared and reviewed by the chairperson.

Initial findings of fact are prepared (e.g., administrative information, a list of the factors that must be considered, etc.). A procedure for developing a good record and complete findings of fact have been developed and are understood.

Arrangements to provide a tape recorder and microphones are made.

Steps required to be taken after the hearing are identified and the necessary preparations are completed.

6. _____ Hearing is opened by the chairperson at the designated date, time, and place. The chairperson reads the opening statement.

7. _____ Initial explanation of the situation, if appropriate, is presented.

8. _____ Hearing is opened for public comment.

The chair controls the hearing in accordance with the established rules of parliamentary procedure.

The board is permitted to ask questions during this period.

9. _____ Public comment portion is closed.

10. _____ Any remaining clarifying questions are asked by the board.

11. _____ The decision is made at the hearing or the hearing is recessed to a later date to enable the board to collect additional information.

The date, time, and place of the continued hearing is established, announced, and recorded before the hearing is recessed.

12. _____ Necessary follow-up steps are taken by the designated person (e.g., notify owners of the decision, file the appropriate documents, etc.).

13. _____ Documents, tapes, etc. are collected and properly stored.

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APPENDIX A

ZONING AMENDMENT FINDINGS OF FACT PLANNING COMMISSION

The attached form is a guide to the type of findings required by a Planning Commission when considering zoning amendments. The City Clerk has this form on computer disk and can produce a final document after the findings are generated by the Commission. The form will ensure that all matters are addressed. Following are notes on the required information and findings.

ADMINISTRATIVE INFORMATION

This section should show the name of the applicant and the zoning change requested. This should be specific enough to allow accurate findings of fact. The change applied for will be stated in the application. The legal description will be contained in the application. The date of the hearing must be shown.

FINDINGS OF FACT

The Findings of Fact contain the actual findings. All areas listed should be addressed.

Items one, two, three and four repeat the administrative data above. Item 5 addresses seven potential areas of adverse effects that may result from a zoning amendment. Each of these areas should be addressed by the Commission. This should be done at the public hearing.

The analysis can be done in many fashions but a common approach is a cost benefit analysis. Approval of the amendment should be analyzed based on the cost to the City v. the benefit to the applicant and the cost to the neighbors v. the benefit to the applicant. Denial of the amendment should be analyzed based on the cost to the applicant v. benefit to the City and the cost to the applicant v. the benefit to the applicant.

Considerations for each area are listed below.

- Item 7a. The policies contained in the Comprehensive Plan should be adhered to. A series of ad hoc zoning amendments can have the effect of altering the zoning code or making it ineffective. There is a strong trend in courts across the nation to require consistency between the Comprehensive Plan and the Zoning Code. This becomes important where there is a question of a regulatory taking.

The cost to the City of an amendment that fails to conform to the general policies of the Comprehensive Plan may be high.

- Item 7b. The general nature of the area and other uses should be considered. The uses prescribed by the zoning code should be preferred since those uses are presumable based on policies derived from the Comprehensive Plan and Council actions. The cost to the neighbors and the City may be intangible, such as a change in the nature of the social environment.
- Item 7c. Conformance to overall performance standards contained in the zoning code is important. These performance standards are intended to control deleterious effects of development as they relate to other properties and the residents peaceable enjoyment of their property. The cost of failing to meet performance standards may translate directly into property value losses to the neighbors and tax income losses to the City. The benefit may outweigh these costs if the applicant is increasing the value of one property by a large amount.
- Item 7d. Both negative and positive effects should be considered.
- Item 7e. Again, both negative and positive impacts should be considered. Here the costs most directly impact the neighbors. There is an indirect impact on the City due to lost tax revenues.
- Item 7f. Traffic generation has the potential for large impacts on the City and the surrounding property. Increases maintenance costs, signage and traffic controls are cost to the City. Increases traffic, safety concerns and general disturbances are costs to the neighbors. The overall cost to the City may be long term. The cost to the neighbors will be immediate.
- Item 7g. This item can severely impact the overall City Welfare. Overtaxing City infrastructure will result in higher costs to all residents. If the City's ability to provide services is overburdened the ultimate cost to the City and its residents could be very high.

RECOMMENDATION

Approval recommendations can be accompanied by recommended stipulated conditions. The Commission can address any problems concerning the seven areas by recommending the imposition of conditions on the zoning amendment or changes to the amendment. Conditions and changes should be clearly stated.

If the Commission recommends disapproval there must be a statement of the reasons. These should be based on the seven areas addressed in the Findings of Fact.

PLANNING COMMISSION OF THE
CITY OF MONTROSE
WRIGHT COUNTY, MINNESOTA

IN RE:
Zoning Amendment Request
of

FINDINGS OF FACT
AND RECOMMENDATION

ADMINISTRATIVE INFORMATION

_____ has applied for a zoning amendment to rezone the following described property from _____ to _____

The subject property is legally described as:

On _____, 20__ the Planning Commission of the City of Montrose met and held a public hearing to consider the application of _____ for a zoning amendment. Said public hearing was duly noticed by publication, posting and mail. Based on the application and evidence received at the above said hearing the Planning Commission makes the following findings of fact and a recommendation to the City Council.

FINDINGS OF FACT

1. The applicant is requesting a zoning amendment to rezone the following described property from _____ to _____.
2. The legal description of the property is as follows:
3. The property is currently zoned _____.
4. The nature of the zoning change is a change in (a districts boundary) (a districts regulations) (provisions of the zoning ordinance).
5. The Planning Commission has considered seven (7) possible adverse effects of the requested zoning amendment. The seven effects and the findings regarding them are as follows.

- a. Is the proposed action consistent with the specific policies and provisions of the official Montrose Comprehensive Plan?
- b. What is the proposed use's compatibility with present and future land uses in the area?
- c. Does the proposed use conform to all performance standards contained in the zoning code including, but not limited to parking, loading and noise?
- d. What are the proposed use's effects on the area in which it is proposed?
- e. What are the proposed use's impacts on property values of the area in which it is proposed?
- f. What traffic generation effects will the proposed use generate in relation to the capabilities of the streets serving the property?
- g. What is the proposed use's impact on existing public services and facilities including parks, streets and utilities and what is its potential to overburden the City's service capacity?

RECOMMENDATION

The Planning Commission of the City of Montrose recommends to the City Council of the City of Montrose that the application of _____ for a zoning amendment be approved/disapproved.

The Planning Commission recommends that the approval be conditioned on the following stipulations:

- 1.
- 2.
- 3.

The Planning Commission recommends disapproval for the following reasons:

- 1.
- 2.
- 3.
- 4.

5.

6.

7.

8.

DATED:

Chair of the City of Montrose
Planning Commission

Endnotes

-
1. Minn. Stat. Chap. 13D.
 2. Minn. Stat. § 462.357, subd. 4.
 3. Minn. Stat. § 462.357, subd. 3.
 4. Minn. Stat. § 331A.02.
 5. Minn. Stat. § 645.44, subd. 5; § 202A.19; § 204C.03, subd. 1.
 6. White Bear Rod and Gun Club v. City of Hugo, 388 N.W.2d 739, 742 (Minn. 1986).
 7. Earthburners v. County of Carlton, 513 N.W.2d 460, 463 (Minn. 1994).
 8. Minn. Stat. § 462.357, subd. 6(2).
 9. Minn. Stat. § 13D.04, subd. 4.
 10. Minn. Stat. § 394.33; 462.36.
 11. Minn. Stat. § 462.355, subd. 2.