

Township Planning & Zoning - A General Overview

Section I:

Preliminary Considerations

Whether or not a township should adopt a comprehensive plan, and subsequently formal land use regulations, depends on a number of factors. Only after careful consideration can any individual township decide if taking on its own land use controls makes sense for that particular community.

Adopting land use controls is a means of regulating development (i.e., how property can be used) to protect the health, safety, and welfare of residents; to balance conflicting interests among property owners; to protect special local interests; and to protect or enhance the economic value of a community. With the authority to control how people use their land, however, comes responsibility, and to some degree, risk of litigation.

The advantages of adopting a township comprehensive plan and zoning related ordinances include the ability to customize regulations to fit local issues, and the ability to adopt regulations more restrictive than those imposed by countywide zoning regulations (i.e., a density ratio of one house per forty acres instead of one per ten acres.) The disadvantages include increased administrative burdens and costs, political fall-out, and an increased risk of litigation. The ability to properly enforce a zoning ordinance is another challenge for many townships.

Before deciding to adopt its own comprehensive plan and zoning ordinances, a township should carefully review the underlying county's ordinances and make a list of the concerns the township believes the county's regulations fail to adequately address. The town board should consider discussing its list of concerns with county officials. Only after determining that the county is either unwilling or unable to adequately address the concerns by amending its ordinances should a township proceed with adopting its own comprehensive plan and land use regulations.

General Authority

The United States Constitution empowers states with authority to establish laws to protect the public health, safety, and welfare. State governments have in turn delegated to local governments the right to adopt ordinances to regulate local concerns, including the regulation of land use issues. In Minnesota, general authority for planning and zoning by local units of government can be found in the Municipal Planning Act, Minn. Stat. §§ 462.351-462.365. Townships also have express authority to conduct limited zoning pursuant to Minn. Stat. §§ 366.10-181, although the current trend is to use the broader authority found in Chapter 462. Townships located in the seven county metropolitan area must also be concerned about Minn. Stat. §§ 473.851- 473.867.

Also, Minn. Stat. § 394.33, subd. 1 requires zoning regulations adopted by a township to be consistent with the "standards" imposed by the county regulations for the county in which the township is located, although the township may adopt more restrictive zoning regulations. What the term "standards" means is not defined by the statute, although a conservative interpretation would mean that the township zoning ordinances cannot allow that which the county prohibits. It should

be noted, however, that Minn. Stat. § 394.33, subd. 2 provides that townships may act with the same authority as cities. Minn. Stat. § 394.32, subd. 3 authorizes cities to completely remove themselves from the scope of county zoning. Thus, an argument exists that townships can act independently of the county's zoning regulations. The resolution of the apparent conflict between Minn. Stat. § 394.33, subd. 1 and § 394.33, subd. 2 and by reference Minn. Stat. § 394.32, subd. 3, is currently being litigated. Townships wishing to exclude themselves from all county control over zoning, therefore, should proceed with great caution and should contact MAT or their local attorney for additional information.

The Players in the Township Planning and Zoning Process

The following are the typical players in the planning process:

< Town Board:

As the elected representatives of the township, the participation and leadership of the town board is essential to effective planning and zoning. The Town Board generally has the final word on the adoption of comprehensive plans and land use ordinances adopted to implement the plan, as well as on how such regulations are enforced. The town board, however, may choose to delegate some administrative tasks to staff or an advisory commission.

< Planning Commission:

The Planning Commission is an appointed advisory board to assist the Town Board on land use matters. For the most part, the exact role of the planning commission, as well as its structure, is up to the discretion of the town board. There are, however, some limited statutory guidelines. Traditionally, planning commissions are responsible for initially drafting comprehensive plans and the ordinances adopted to implement the plan, as well as drafting or reviewing proposed amendments to the plan or ordinances. The planning commission can also be used to conduct the assorted public hearings required by statute, and to make planning and zoning recommendations to the town board.

Townships conducting zoning under Minn. Chapter 366 are authorized to appoint a planning commission to assist in the development and enforcement of zoning regulations authorized by Minn. Stat. §§ 366.10-18. The size and exact duties of such a planning commission are set at the discretion of the town board (see Minn. Stat. § 366.17.)

Townships exercising the broader zoning authority under Minn. Stat. Chapter 462 are also authorized to appoint a planning commission (see Minn. Stat. § 462.354). In fact, while the creation statute uses the term “may”, other provisions of Minn. Stat. Chapter 462 indicate that a planning commission must be appointed. For example, the provisions of Chapter 462 regarding the development of a comprehensive plan provide the exclusive authority for such development to the planning commission.

Thus, it is strongly recommended that all townships proceeding under Minn. Stat. Chapter 462 appoint a planning commission.

Minn. Stat. § 462.354 is silent as to the required size of a planning commission, but it does provide that members of the town board may also serve on the commission. In theory, therefore, it is possible that the town board could simply name itself to serve as the planning commission. In order to ensure that differing viewpoints are represented, and to avoid potential due process challenges, townships are encouraged to appoint independent planning commissions, or to at least have a couple of non-supervisors serve with the supervisors on the commission.

< Board of Appeals and Adjustments:

A township adopting land use regulations pursuant to Minn. Stat. Chapter 462 is required to establish by ordinance a Board of Appeals and Adjustments. The Board may be an independent body, the Planning Commission, the Town board, or a committee of the Commission (see Minn. Stat. § 462.354, subd. 2.). Boards of Appeal and Adjustment are not discussed in Minn. Stat. Chapter 366, but the functions of the board as discussed below should still be provided for in the zoning ordinance.

The Board of Appeals and Adjustments reviews appeals of actions by the planning commission, zoning administrator or other administrative officer. The Board also hold public hearings to consider variance requests. Depending on the jurisdiction, the Board either makes recommendation to the town board, or in some townships makes the final decision on variances.

< Zoning Administrator/Staff:

The zoning ordinance is administered by a government official usually designated as the Zoning Administrator. Typically, the Zoning Administrator processes requests for zoning changes, conditional use permits, variances, and subdivision applications. The Zoning Administrator collects background data, analyzes proposals, prepares reports for and makes presentations to the Planning Commission. Often, the Zoning Administrator may be the person responsible for preparing findings by the Planning Commission and Board of Appeals that will be submitted to the town board.

< Metropolitan Council:

Local units of government located in the seven county metropolitan area as defined in Minn. Stat. Chapter 473, must submit proposed comprehensive plans and amendments to the Metropolitan Council for review. A copy of the final regulations adopted pursuant to the plan must also be filed with the Met Council. Planning assistance is also available through the Metropolitan Council.

< Consultants and Attorneys:

Professional planners and other consultants can be an invaluable resource to a township that is beginning the planning and zoning process. Planners can help identify issues of which the township may be unaware. Legal assistance is very important to help ensure that all documents have been properly drafted and that all procedural requirements have been followed.

Section II:

Primary Components

< Comprehensive Plan

The comprehensive plan states the goals, policies, and standards which guide a township in its growth and development. The comprehensive plan is the primary planning document for a community and is the plan on which all related ordinances are based, including zoning ordinances and subdivision regulations. It may be rather simple or quite sophisticated. Townships in the metropolitan area subject to Minn. Stat. Chapter 473 are required to include in their comprehensive plans statements addressing a number of issues (see Minn. Stat. § 473.861). For example, as the result of language contained in the 2001 Minnesota State Omnibus Transportation Bill, such townships will be required when they amend their comprehensive plans after August 1, 2001, or upon receipt of a proper petition, to include statements regarding that township's goals and objectives related to aggregate and other natural resources, transportation infrastructure, land use compatibility, habitat, agricultural resources, and other planning priorities.

The comprehensive plan is usually published in the form of both text and a map. The text may provide background information on how policy decisions were reached and why certain policies were established. The map identifies the proposed areas of land use, street systems, utilities, airports and other transportation aspects, parks, and schools.

The comprehensive planning process considers and reviews all aspects of a township's life and sets policies to follow as new development or redevelopment opportunities arise. The plan attempts to identify a township's needs and desires and then establish the basic framework to accomplish its goals.

< Subdivision Regulations

Subdivision regulations govern the division and development of land. They help translate the comprehensive plan into law and establish procedures for dividing the township into streets, blocks, buildable lots, and open spaces. Standards are set for lot and street design, drainage, park dedication, required improvements and similar

concerns. Subdivision regulations can be included as part of a comprehensive zoning ordinance, or they can be adopted as a stand alone ordinance.

Further, pursuant to Minn. Stat. § 462.358, the adoption of subdivision regulations give township the express authority to enter into developer agreements by which would-be developers and the township enter into a series of agreements regarding such things as road dedications, and various types of service delivery. A recent court decision has raised some doubts as to a township's authority to enforce developer agreements in the absence of subdivision regulations, although options still exist for achieving the same results.

< Zoning Ordinance

The zoning ordinance translates the land use goals in the comprehensive plan into an ordinance which regulates the way in which the land may be used. Usually there is text containing the regulations, and a map showing the location of the land use zones within the boundaries of the township.

At the very least, a good zoning ordinance should contain the following: definition of the types of districts being created; a list of permitted, accessory, and conditional uses for each district; a statement of all procedures to be followed, and general conditions that will be considered by the board when making zoning related decisions.

On the other hand, certain items do not belong in a zoning ordinance. For example, specific building standards must be part of a separate building code adopted pursuant to the Uniform State Building Code. Further, while good zoning provisions can help prevent some types of nuisances, the zoning ordinance is not the place to address such common nuisance problems as animals roaming at large, weeds and tall grass, and similar types of problems.

Section III:

Process for Development and Adoption

Once a township determines that it wants to proceed with local planning and zoning, it will need to determine which statute to proceed under. Minn. Stat. § 366.10, et. seq. provides for more input by residents via a mandatory referendum on the question of whether or not the town should adopt zoning regulations. On the other hand, the exact type of regulations that can be adopted are more restricted than those authorized by the general municipal planning and zoning statutes found in Minn. Stat. Chapter 462. For example, the authority to clearly enforce developer agreements pursuant to subdivision regulations is only provided for in Minn. Stat. Ch. 462. Further, by not requiring an election, proceeding under the provisions of Minn. Stat. Chapter 462 can be more efficient and less expensive. Regardless of which chapter a township decides to proceed under, it will need to be careful to follow the procedural requirements of that statute.

Chapter 366:

The first step towards exercising planning and zoning under the provisions of Minn. Stat. §§ 366.10-19, is to submit the question of whether the township should adopt planning and zoning to the electors. The form of the ballot is specified in Minn. Stat. § 366.11. The question can be submitted at either the general election held in conjunction with the annual meeting, or at a special election called for the purpose of submitting the planning and zoning question to the voters. (Note: Minn. Stat § 366.10 refers to submitting the question at the annual or a special town meeting, but the use of a ballot and the language in Minn. Stat. § 366.11 makes it clear that an actual election must be conducted. This triggers the need to conform with election laws applicable to ballot questions as specified in Minn. Stat. Chapters 204B and 205.)

If a majority of those who vote on the question vote “Yes”, the town board may proceed with the process of planning and zoning. If the board wishes to appoint a planning commission to assist in the development, adoption, and implementation of planning and zoning regulations, this would be the time to do so. To create a planning commission, the board needs to adopt an ordinance (see Minn. Stat. § 365.125 for procedure) specifying the size, qualifications, and duties of the board.

The next step under Minn. Stat. Chapter 366 is the development of a comprehensive plan. The development of a comprehensive plan is not expressly provided for in Minn. Stat. Chapter 366, but Minn. Stat. § 366.14 states that the zoning regulations are to be adopted in accordance with the comprehensive plan, thus triggering the need to have a plan. The plan can be drafted by either the town board or the planning commission if one is created. While the provisions in Minn. Stat. Chapter 366 do not provide a procedure for developing a comprehensive plan, Minn. Stat. § 366.12 does require a public hearing to be conducted before the adoption of any regulation. Thus, while the plan itself is not technically a regulation, because it is an integral part of the regulatory process, the township should conduct a public hearing before the board adopts a proposed comprehensive plan. Notice of the time and place of the hearing must be provided at least ten days prior to the hearing in a newspaper of general circulation in the county in which the township is located (see Minn. Stat. § 366.15.)

Once the comprehensive plan has been adopted, the town board or the planning commission can begin drafting a formal ordinance to implement the plan. Following a public hearing on the proposed ordinance, following the same notice requirements discussed above, the town board can adopt the proposed zoning ordinance, using the normal ordinance adoption procedure provided in Minn. Stat § 365.125 (majority vote, publication, posting, and recording.)

Chapter 462:

The process for developing and adopting a comprehensive plan, and a subsequent zoning ordinance, pursuant to the Municipal Planning Act in Chapter 462 of the State Statutes is

fairly similar to the process discussed above for Minn. Stat. Chapter 366, except no election is required, nor is one even authorized. As discussed above, the creation of a planning commission, however, becomes mandatory instead of optional. Minn. Stat. §462.354 provides for the creation of a planning commission by ordinance adopted by the governing body. Again, the formal ordinance adoption procedures of Minn. Stat. § 365.12, would apply. As discussed earlier, the town board can provide for board members to serve on the commission, and in theory could simply appoint itself to be the commission, although the latter is not a highly recommended practice for most townships. Once established, a planning commission may only be abolished upon the adoption of a repealing ordinance approved by a two-thirds supermajority vote of the board.

Upon its creation, the planning commission is statutorily mandated to develop, in consultation with other departments, agencies, etc. as needed, the town's comprehensive plan. Consideration is to be given to the planning activities of adjacent local units of government (see Minn. Stat. § 462.355, subd. 1.). In the alternative, the town board can develop and approve by resolution the plan it believes would be best, but it must submit that plan to the planning commission, allow sixty days for review by the commission, and then follow the rest of the procedures outlined below before such a plan can be officially adopted (see Minn. Stat. § 462.355, subds. 3,4.)

Once the plan has been developed, a public hearing must be held before it can be adopted. The hearing must be preceded by at least ten days notice of the time and place, published in the official newspaper for the township (see Minn. Stat. § 462.355, subd. 2.) Final approval of the plan must be by resolution adopted by two-thirds of the board. Further, Minn. Stat. § 462.36, subd. 2, requires that a copy of the plan be filed with the governing bodies of all cities or townships abutting the town adopting the plan, as well as with any regional planning agency serving the area if one exists.

Upon adoption of the comprehensive plan, the township may adopt a zoning ordinance, a subdivision ordinance, or any other type of regulation determined necessary to implement the goals and objectives of the comprehensive plan. As with the comprehensive plan, a public hearing is required prior to final approval by the town board, but only a majority vote is required to pass a zoning ordinance (see Minnesota Session Laws 2001, Chapter 207.) Certified copies of all subdivision ordinances adopted pursuant to Minn. Stat. § 462.358, as well as any related maps adopted pursuant to Minn. Stat. § 462.359, are supposed to be filed with the county recorder, but failure to do so will not invalidate the regulations.

Section IV:

Administration and Enforcement

Land use regulations are generally administered and enforced through a process of issuing permits and seeking judicial relief as needed, whether through civil actions seeking injunctions or similar court ordered action, or criminal prosecutions for violations of the ordinance. In addition, there is the need to respond to requests for variances, rezonings, and amendments to the zoning ordinance or comprehensive plan.

The designation of a zoning administrator allows for the coordination of duties which helps ensure that everything that needs to be done gets done in a timely and efficient manner, and that enforcement of the land use regulations is uniform.

The keys to successful administration includes being aware of due process and closely monitoring statutorily imposed deadlines such as the “Sixty Day Rule”. To aid in the process, it is strongly recommended that the township develop set procedures, applications, etc. for each required permit, as well as for requesting variances, conditional-uses, rezonings, amendments, and other comparable tasks.

To help offset the costs associated with administering planning and zoning, the town board may, by ordinance, establish fees for all zoning permits and applications for variances, rezonings, etc.. Minnesota Session Laws 2001, Chapter 207, provides that as of January 1, 2002, such fees must “fair, reasonable, and proportionate to the actual cost of the service for which the fee is being imposed.” It also requires an accounting process to be established to ensure that the fees are only used for the purpose for which they are collected. While this statute is applicable only to planning and zoning conducted under Minn. Stat. Chapter 462, the same basic principles exist for planning and zoning under Chapter 366 as a result of preexisting case law on fees charged by local units of government.

< Due Process

Due process ensures that all persons appearing before the Planning Commission, Board of Review, or Town board will be treated equally and given the same opportunities. Due process encourages objective decision making. State statutes require public hearings in the interest of ensuring due process for affected property owners. Due process procedures include notice to persons within a specified distance of the affected property, the opportunity to be heard, findings of fact, no conflict of interest on the part of the decision maker, prompt decisions, and a record of the proceedings.

< Public Hearings

Public hearings are required before the adoption of any comprehensive plan or plan amendment, before the adoption of any zoning ordinance or amendment, and before the granting of variances, conditional use permits, or rezonings. General notice must be given by publication in the official newspaper at least 10 days prior to the hearing. It is also a good idea to post the notice at all regular township posting locations. Further, certain zoning issues such as variances, conditional use permits, and rezonings, require notice to be mailed to property owners within a 350 foot radius of the land in question (see Minn. Stat. §§ 462.355, subd. 2; 462.357, subd. 3; 462.3595, subd. 2.)

Public hearings should include a complete disclosure of what is being proposed and a fair and open assessment of the issues raised. A public hearing must include an opportunity for the general public and interested parties to hear and see all information and to ask questions, provide additional information, express support or

opposition, or suggest modifications to the proposal. Simply stated, public hearings must provide for the effective participation of the public.

Due to the small size of many townships, and sometimes due to the prevailing lack of interest in the proceeding, many feel that a formal meeting procedure is inappropriate. Every community is unique and must find the procedures that work best for that particular township, keeping in mind that planning and zoning is serious matter that could later be subject to judicial review.

< Role of the Chairperson

The Chairperson has the responsibility of conducting the meeting. If the hearing is before the Planning Commission, the Chairperson should explain the role of the Commission and that it is an advisory board that passes recommendations on to the Town board. If the hearing is before the Town board, the Chairperson should explain that the Planning Commission has reviewed the matter and the Planning Commission's recommendation.

The Chairperson should explain at the beginning of the meeting the procedure to be followed in the hearing. People should know when they will be allowed to participate and the rules of conduct that they will be held to. Order must be established at the beginning of the meeting if there is to be hope of maintaining order throughout the meeting. The Chairperson should establish that the hearing is a formal procedure and that everyone will be given an opportunity to participate, that their comments should be concise and to the point, and that people should be as factual as possible. If many people share the same viewpoint, they should be encouraged to appoint a spokesperson and avoid repetitive testimony.

< Hearing Procedure

The following procedure is designed to provide opportunities for everyone to participate. Such a procedure is particularly beneficial if the issue being considered is known to be controversial. This procedure, however, is intended only to be an example of the type of procedure that can be followed. Each township should modify this sample, or adopt another one, as is determined to be in that community's best interest.

I. Staff Presentation

A. Presentation by Staff

Township staff identifies the subject property, describes the nature of the application, presents the zoning and planning issues, and explains the action to be taken by the Planning Commission, Board of

Appeals, or the Town board. A concise description of the issues should be stated.

B. Questions to Staff from the Commission, Board of Appeals, or town board

This is to ensure that the Planning Commission or Town board fully understands the information that has been presented by the staff and the information that is in their background materials packet.

C. Questions from Applicants.

This provides the opportunity for the applicants to ask questions to clarify information that has been presented by the township or included in the planning report.

D. Questions to Staff from the Public

This provides an opportunity for anyone in the general public or other interested parties to ask questions about the information presented by the township.

II. Applicant's Presentation

A. Presentation by the Applicant

In this portion of the proceeding, the applicant has the opportunity to present his or her case. This is the applicant's opportunity to present factual information to demonstrate the proposal's compliance with the township's comprehensive plan and zoning ordinance standards.

B. Questions for the Applicant from the Commission or Board of Appeals or Town Board

The Planning Commission, Board of Appeals, or Town board has the opportunity to ask whatever questions they have about the proposal and information presented by the applicant.

C. Questions for the Applicant from the Public

The public is allowed to ask questions of the applicant. No statement either for or against the proposal should be accepted at this point.

III. Statements from the Public

A. Statements from the Public in Support of the Application

This is a particularly important part of the proceeding if the proponents are in the minority. Even though large crowds against a proposal may be intimidating, the Chairperson must ensure and opportunity for those who wish to speak in favor of the proposal.

B. Statements from the Public in Opposition to the Application

The Chairperson should encourage people to keep their comments as concise as possible and as accurate as possible and to be factual with the evidence that they present for public consideration.

IV. Close the Public Hearing

Following the close of the formal portion of the public hearing, the Planning Commission, Board of Appeals, or Town board should discuss the proposal. It should be remembered that for purposes of the Open Meeting Law, the discussions must be open to the public.

V. Action

The Commission should make a recommendation or the town board should either deny or approve the application. The matter may also be continued for further consideration.

Section V:

Specific Issues

< Conditional Uses (a.k.a. "Special Use")

Conditional uses are uses which may be appropriate, or even desirable, and which are generally consistent with the intent of the comprehensive plan and the underlying zoning regulations, but which require special approval because they may create problems such as excessive traffic congestion or noise, or strain essential public facilities and services. Conditional uses are not directly addressed in Chapter 366 except in regard to manufactured housing. However, there is implied general authority in the chapter to regulate other uses as conditional uses. Minn. Stat. § 462.3595, on the other hand, expressly recognizes conditional uses and provides helpful guidance even for those communities proceeding under Chapter 366.

To address the types of concerns outlined above, the town board may impose specific requirements which must be met before the use will be allowed. The conditions, however, must be at least be generally provided for, along with a general understanding of the criteria to be used to determine compliance, in the zoning

ordinance. To the extent possible, the ordinance should provide specific requirements for each use. The ordinance can adopt by reference a set of criteria that the board adopted and maintained separately by the board.

Either the town board or the planning commission must review applications for conditional use permits in light of the adopted standards, conducts the required public hearing following the notice requirements discussed above, and then makes a decision based upon its findings of fact and usually with specific requirements of the applicant to ensure that the standards are met. If the planning commission conducts the hearing, the town board needs to review the record and then either affirm or deny the commission's recommendations. The board's decision to affirm or deny should also be supported by a findings of fact, although it may be shorter than the detailed one developed from the public hearing.

Once granted, conditional uses continue with the land, not the applicant, and must be allowed to continue provided all of the conditions remain satisfied, although future zoning amendments may render a conditional use a non-conforming use as well. A certified copy of the conditional use permit must be filed with either the county recorder or with the registrar of titles for the county. It must contain a legal description of the property subject to the permit.

< Rezoning:

Rezoning is the process of re-classifying a particular area from one type of zoning district to another. A common request townships receive is to change all or a portion of an agricultural district to some type of residential district. Town Boards have a fair amount of discretion in determining whether or not to rezone any area. Town Boards do need to be careful to avoid "spot zoning". Rezoning is a type of amendment, and therefore a public hearing is required before approval can be granted. Rezoning requests should follow the process outlined below for zoning amendments.

< Spot Zoning:

Spot zoning results when a relatively small area of land, such as a single parcel, is rezoned to allow uses not consistent with the surrounding uses. To avoid spot zoning, town boards should be sure that requests for rezoning comply with the comprehensive plan, that the resulting use will be consistent with the abutting uses, and that the reclassification serves a public purpose rather than just providing a benefit to a private party.

< Variances

As with conditional uses, variances are not specifically addressed in Chapter 366, but are recognized in Chapter 462 (see Minn. Stat. § 462.357, subd. 6(2), and § 462.358,

subd. 6.) A variance is a legally permitted deviation from the strict terms of a township's land use regulations as applied to a specific piece of property. A common example is a variance request from a township's zoning ordinance regarding dimensional regulations (height, density, setbacks, etc.). A variance can not be applied to the use of the land.

A variance should only approved if strict enforcement of the ordinance would result in undue hardship for the applicant. Undue hardship means more than ordinary inconvenience or difficulty. Generally undue hardship means the property cannot be put to reasonable use under the conditions allowed by the zoning ordinance, the plight of the landowner is due to circumstances unique to the property not created by the landowner, and granting the variance will not alter the essential character of the locality. Economic considerations alone do not constitute an undue hardship if reasonable use for the property exists under the terms of the zoning ordinance.

To be approved, a variance request must meet the standards specified in the zoning ordinance. Reasonable conditions may be imposed in granting a variance to ensure compliance with the general intent of both the comprehensive plan and zoning ordinance and to protect adjacent properties. A public hearing before the board of appeals and adjustment is required prior to approval, with notice provided as outlined above. Final approval by the board can be done by simple majority vote. Variances granted to a subdivision regulation pursuant to Minn. Stat. § 462.358, subd. 6, must be filed with either the county recorder or the registrar of titles for the county in which the township is located.

Section VI:

Decisions and Appeals

< Findings of Fact

Planning and zoning decisions may always be litigated. There must be an adequate factual basis in the record to support the reasons for the decision. Therefore, planning commissions, boards of review, zoning administrators, and town boards must always apply the facts before them to the applicable law, and must state the reasons upon which their decisions are based. These reasons or rationale are referred to as findings of fact. The findings should be clearly stated and recorded in writing.

< Appeals:

Zoning ordinances should provide for an appeals process for parties aggrieved by decisions of the zoning administrator, planning commission, town board, or board of appeals and adjustments. The board of appeals and adjustment is the starting point for appeals of decisions by the zoning administrator or other designated staff, and can be used to hear appeals of decisions made by the town board. If the town board has not already heard the issue, the ordinance can provide for an appeal to the

board at a regular or special board meeting. To protect the due process rights of the party filing the appeal, the person should be allowed to provide any evidence he or she has available, and should also be allowed to be represented by legal counsel if so desired. Ultimately, the final decision reached at the township level is appealable to the courts. Judicial appeals of decisions made pursuant to Minn. Stat. Chapter 462 are appealed initially to the district court for the applicable jurisdiction (see Minn. Stat. § 462.361.) Comparable language does not exist in Chapter 366, and based on the rules of court, it would appear that judicial appeals of zoning decisions made under Minn. Stat. Chapter 366 should be made by writ of certiorari to the Minnesota Court of Appeals.

< Amendments:

Amendments to comprehensive plans and zoning ordinances can generally be proposed and adopted in the same manner outlined above for the creation of the original plan or ordinance, except that it is not necessary to conduct a new election as initially required under Minn. Stat. Chapter 366. Again, as a result of Chapter 207 of the 2001 Session Laws, amendments to zoning under Minn. Stat. Chapter 462 can now be adopted by a simple majority vote of the board instead of the previously required two-thirds vote. In addition, Minn. Stat. § 462.357, subd. 4 provides for a method by which property owners can petition for an amendment to the zoning ordinance (a request for rezoning is the most commonly requested amendment by citizen petition.)

Another provision of the 2001 Minnesota Omnibus Transportation Bill, allows property owners in the metropolitan area to, after August 1, 2001, request a review of the comprehensive plan if the request is based on an aggregate related concern. Upon receipt of such a petition, the board will need to review its plan and if it does not already do so, incorporate the goals and objective statement discussed earlier in this paper.

< Non-Conforming Uses:

Land uses that pre-exist the creation of a new zoning ordinance, or any amendment thereto, are generally grandfathered in and must be allowed to continue even though they are no longer consistent with the intent of the zoning ordinance. This protection of pre-existing uses has long been recognized by the courts, and was codified into state law through Minnesota Session Laws 2001 Chapter 174. Under this provision, a non-conforming use must be allowed to continue, including being repaired, unless the use is discontinued for a period of more than year, or is destroyed by fire or other peril to an extent greater than fifty percent of its market value. Reasonable regulations can be imposed on non-conforming uses to prevent or abate nuisances and to protect the public health, welfare or safety.

Section VII:

Timing

< Sixty Day Rule:

In very simple terms, as it applies to planning and zoning, what is commonly known as the “sixty day rule” means that a township must make a final decision on a land use related matter within sixty days of receiving the application for whatever is being sought (i.e. variance, conditional use permit, rezoning, etc.). If the township fails to take action within sixty days, the request is deemed automatically approved. The time clock begins upon receipt of a completed application. The town clerk has ten days in which to determine whether or not the application contains all of the information required by the township. If the application is not complete, the clock can be stopped by returning the application to the applicant along with a written explanation of what is needed to make the application complete. If a revised application is submitted, a new clock begins. If the original application is complete, however, or if the clerk fails to find it incomplete within the first ten days, the clock is deemed to have started on the day the application was originally received.

The town board can extend the timeline by an additional sixty days, for a total of 120 days, if before the end of the original sixty days it provides the applicant with written notice of the boards intent to extend the deadline another sixty days and the reasons why the extension is needed.

To constitute final action, the township must either approve the request, or pass a motion to deny the application. The courts have held that the failure to approve a motion to grant the request is not a denial, so an actual motion to deny must be made and approved. If denied, the reasons why must be provided in writing. The written notice of the decision, and the reasons why if denied, must be provided to the applicant within the applicable 60/120 day window.

There are exceptions to the sixty day rule. For example, if a project requires a formal environmental impact study, the clock is stopped until the study is complete. However, to avoid the risk of automatic approval, a township should proceed with all requests as if it only has sixty days to make its decision. It can then check with legal counsel to determine what if any exceptions or extensions may be available. The sixty day rule can be found in Minn. Stat. § 15.99.

Section VIII:

Other Considerations

< Moratorium:

From time to time a township may encounter a particular type of use for which it is uncertain how to proceed. Further, changes in how development is actually occurring as opposed to how it was projected to occur may trigger the need to

modify the comprehensive plan and zoning ordinance and the township will want to prevent further problems from occurring until the revisions can be made. Or, a community that is considering the adoption of its first comprehensive plan and zoning ordinance may simply want time to do things right without changes in the town's make-up occurring during the planning process. In these situations, it may be helpful to adopt what the statutes call an "Interim Ordinance", but what is more commonly referred to as a moratorium. Moratoriums can be imposed on a particular use, or in some situations, they can be used to prevent any type of new development.

To be enforceable, the moratorium must be adopted as a formal ordinance, following the ordinance procedures of Minn. Stat. § 365.125. The ordinance should clearly define the area and types of uses to which it is to apply. It should also provide an effective date and duration. Minn. Stat. § 462.355, subd. 4, authorizes an initial one year period for the ordinance to be in effect, with extensions being authorized by action of the board for an additional eighteen month period.

Imposing some sort of development moratorium, however, can not be done solely for the purpose of stalling. One of the requirements for imposing an interim ordinance is that a study be conducted with the intent of ultimately adopting planning and zoning revisions to address the identified problem(s). Courts have routinely struck down attempts to impose a moratorium when no study is actually be conducted and no other work on revising the planning and zoning documents is occurring.

Miscellaneous:

While this paper provides a broad overview of the general issues involved with planning and zoning, there are a number of related issues and finer details which time and space do not permit to be covered. Examples of other issues a township needs to consider are State and Federal land use regulations related to such things as shoreland management and clean water. The federal Telecommunications Act of 1996, the Religious Land Use and Institutionalized Persons Act of 2000 are examples of laws preempting certain aspects of local land use regulations. Civil rights and affordable housing issues are examples of collateral attacks that can be made against the results of zoning ordinances.

Because of the complexities involved with planning and zoning, a township may wish to hire a planning consultant, at least for development of the original comprehensive plan. As always, MAT attorneys are available to provide general information, but it is strongly recommended that a township work closely with its own attorney when drafting or amending a zoning ordinance, or whenever there are specific questions about a particular variance, conditional use permit, or request for rezoning, etc.

Another option townships can consider is joint planning with the county or contracting with the county for planning and zoning services. These options are

available pursuant to Minn. Stat. § 394.32 and § 462.3585. Remember, however, as discussed earlier a town may wish to implement planning and zoning independent from, and without regard to, county regulations as allegedly authorized by Minn. Stat. § 394.33, subd. 1, § 394.32, sub d. 3, and § 394.33, subd. 2. Regional planning between townships, townships and cities, townships and counties, or any combination thereof, is also authorized by Minn. Stat. § 462.371 but again special advice should be sought before proceeding under this approach.