

Don't Worry About the Answer, Ask the Right Questions: Important Questions to Ask About Your Town Zoning Ordinance

Kennedy

&

Graven

CHARTERED

Kyle Hartnett
470 US Bank Plaza
200 South Sixth Street
Minneapolis MN 55402
(612) 337-9207 telephone
(612) 337-9310 fax
khartnett@kennedy-graven.com
<http://www.kennedy-graven.com>

The decision to adopt a zoning ordinance is unique to each community. Adopting a zoning ordinance can be a large undertaking for towns. The purpose of this memo is to highlight some of the questions town officers should ask when determining whether to adopt a zoning ordinance for their community or whether to amend their existing ordinance.

BASICS OF ZONING

A zoning ordinance is simply an ordinance regulating the development of land within a town. A town board will adopt an ordinance that protects the health, safety, and welfare of a town's residents. The ordinance will restrict how residents and property owners may use their property within the town.

A zoning ordinance is adopted pursuant to the Municipal Planning Act and can be found in Minnesota Statutes, sections 462.357-462.365. There is also limited authority for a town to adopt zoning in Minnesota Statutes, Chapter 366, however, the authority in Chapter 462 is broader and is generally more efficient. Also note, towns located in the metro area are required to comply with specific regulations spelled out in Minnesota Statutes, sections 473.851 to 471.871.

Finally, towns must keep in mind that pursuant to Minnesota Statutes, section 394.33, all town land use regulations must be at least as restrictive as the county's land use regulations. A county ordinance, therefore, can prevent a town from regulating land in a manner the town board seems fit. If a town does not adopt land use regulations, the county's ordinance will apply to the town.

COMPREHENSIVE PLAN

The Municipal Planning Act contemplates a comprehensive plan will be developed and adopted before a zoning ordinance is adopted. Some towns will adopt a zoning ordinance without having a plan, and we have argued a plan is not absolutely required, but I generally do recommend that a town that plans on engaging in general zoning (versus just adopting a small set of stricter requirements) adopt a comprehensive plan. The plan can range from a "full blown" comprehensive plan created from scratch by the town that addresses the component parts of a comprehensive plan as defined in Minn. Stat. § 462.352, subd. 5, or it can be a relatively short and simple document identifying some basic goals. A town could also look at adopting the relevant portions of the county plan by reference.

1. Would the town intend to develop and adopt a comprehensive plan?
2. If so, which parts of a comprehensive plan would the town like to develop and adopt in addition to a land use plan?

ZONING ORDINANCE

1. What are the goals the town would like to achieve by adopting a zoning ordinance?
2. What specific issues/uses does the town believe are not being adequately addressed by the county ordinance (the answer to this question will help determine whether it is worthwhile for the town to adopt its own regulations)?
3. Does the town want to regulate subdivisions?
4. The town is responsible for administering and enforcing any regulations it adopts, so would the town want to adopt a full spectrum of regulations (similar to the county ordinance), or would it want to adopt regulations only on a limited number of specific issues/uses?
5. Is the town willing to accept the risks and workload involved with administering zoning regulations?
6. Would the town want to set out the entire text of its regulations in its ordinance or would it want to adopt sections of the county ordinance by reference (there are certain administrative provisions that would need to be included in the town's ordinance, but there are often various sections of the county ordinance that could be adopted by the town's ordinance then explaining how it is stricter than the provisions adopted by reference to help reduce the size of the ordinance)?
7. What regulations that are as strict as or stricter than the county ordinance would the town be interested in adopting (understanding that the town can only be as strict as or stricter than the county's regulations, and the town may not adopt regulations on matters that are preempted from local regulation)?
8. Are there any uses the county allows under its ordinance that the town would like to prohibit or classify as a different allowed use in its ordinance (e.g., classifying a use allowed by the county as a conditional use or an interim use under the town's ordinance)?
9. Are there any uses the town does not want to regulate itself, thus leaving it to the county?
10. To what extent would the town want to be responsible for issuing permits?
 - a. Land use/building permits?
 - b. Conditional use permits?
 - c. Interim use permits?
 - d. Variances?
11. Would the town want to require an applicant to obtain a permit from the town even if the county requires the applicant to go through a duplicate process to obtain a county permit?
12. Who would be responsible for administering and enforcing the ordinance locally (a town officer or would the town hire a zoning administrator)?