

City of Silver Lake
PLANNING & ZONING
The Basics

INTRODUCTION:

Welcome to the Silver Lake Planning Commission. This is an introductory report that attempts to offer the basic background information needed by a planning commissioner. All information is based on a compilation of lectures, brochures and handouts from workshops, League of MN Cities Bulletins, and other related sources. Planning and Zoning is one of the most interesting and important aspects of city government and often one of the most misunderstood. Consider the fact that Silver Lake celebrated its centennial in 1989. Decisions made today may affect the condition of the City at its 2089 bicentennial.

BACKGROUND:

Silver Lake is a statutory city. This means that any powers of the city are either permitted or granted through legislation as listed in the Minnesota Statutes. Statutes outline the needed structure of city government; permit a municipal liquor store, police force, ambulance and fire department. Minnesota Statute Chapters 462 (MS 462) contains subdivisions that are expressly applied to local governments concerning their powers to enforce planning and that have been clarified through case law (lawsuits).

MS 462.351 MUNICIPAL PLANNING AND DEVELOPMENT; STATEMENT OF POLICY.

"The legislature finds that municipalities are faced 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 other open lands, and to promote the public health, safety, and general welfare. Municipalities can prepare for anticipated changes and by such preparations bring about significant savings in both private and public expenditures. Municipal planning, by providing public guides to future municipal action, enables other public and private agencies to plan their activities in harmony with the municipality's plans. Municipal planning will assist in developing lands more wisely to serve citizens more effectively, will make the provision of public service less costly, and will achieve a more secure tax base. It is the purpose of sections 462.351 to 462.364 to provide municipalities, in a single body of law, with the necessary powers and a uniform procedure for adequately conducting and implementing municipal planning."

Formation of planning commissions by city councils has been permitted under statute for the purpose of advisory and administrative functions based on a greater knowledge base than a city council concerned with a larger variety of issues will likely develop. In addition, a separate commission insulates the council politically in the case of the more unpopular decisions.

PLANNING COMMISSION RESPONSIBILITIES:

Most commonly, as in Silver Lake, the planning commission also serves as the Board of Appeals and Review. The terms Planning Commission or the Commission and Board of Appeals and Review will be used interchangeably. The following types of project reviews are most common.

Conditional use permit: A conditional use permit gets its name from the conditions which the planning commission can require for development. Permitted uses are listed in the ordinances. Examples of terms under a conditional use permit may include green barriers for a commercial property abutting a residential section, the type of business, lighting, building type, and landscaping. There are zoning classifications (commonly, multifamily residential) in which any development requires a conditional use permit. As a rule, this type of action does not generate a great deal of controversy. The planning commission can only make recommendations to the council for any conditional uses. All conditional use permits have a time limit in which the project must be started (one year in Silver Lake) and are recorded to the property with the county recorder.

Variance. Variances are exceptions to the Zoning ordinances. MN statutes require a finding of “practical difficulties” unique to the property for granting of a variance. Petitions for a variance are most commonly requesting a modification of setback requirements but may include other modifications such as sizes of signs. Granting of a variance would mean that the person would have to demonstrate legitimate reasons that the terms of the ordinances cannot be met, this is done by satisfactorily answering five basic questions in the application process. Variances are granted by the City Council based on a recommendation from the Planning Commission, have a time limit in which it is to be started and are recorded to the property. Court cases exist for suits filed by both those that have not received variances and those opposed to variances that were granted.

Changes to the Zoning Map: This type of action is self-explanatory. These requests are usually that of a change from residential to commercial or residential to multifamily residential. The planning commission holds the hearings, however, the final decision for a change in zoning is often referred to the city council after review by the commission. The legal basis for this is that a change of zoning is a modification of ordinance and as such requires a legislative action. Considerations for zoning changes must follow the comprehensive plan and must be reasonable. “Spot” zoning is not considered acceptable and is easily challenged in court.

Four of the above actions require public hearings with notification to property owners within three hundred fifty feet of the location. In addition, *and most importantly*, case law has demonstrated that all decisions should have a **“Finding of Fact.”** A finding of fact or finding is a legal term that is used to demonstrate that the decisions were well thought out and not “capricious and arbitrary”. The list of facts can include opinions and determinations. For instance, a finding may be included that “It is the opinion of the planning commission that this a best use of the land”, or a “determination has been made that subject to a soil sample made by the engineering firm of Best Engineering, the south section of the lot will not support a foundation”. Note that the fact in both instances is that it is either an opinion or a determination and not the substance of the finding.

How important is the development of findings? In Willmar, the city council overturned a variance decision made by the planning commission. In the resultant court action, the courts upheld the decision of the planning commission based on the fact that the planning commission was the more knowledgeable body and most importantly had developed a list of findings, which the city council did not do. When decisions go to court, the courts more commonly uphold those decisions based on findings. Due to the statutory guidelines for municipalities and their right to make decisions based on the comprehensive plan, a decision made by a commission in one city may be opposite that made by a commission in another city, but if shown to be thought out, both are legitimate.

Other responsibilities of the commission include review of the comprehensive plan, zoning ordinances, and capital improvement planning. A comprehensive plan is on file for Silver Lake and includes a review of demographics and plans for future growth. Minnesota Statutes grant a great amount of importance to this plan and specifically state that the comprehensive plan needs to be developed before development of any capital planning, zoning ordinances and map as that development is to follow the plan. Once developed, neither the comprehensive plan, the zoning ordinances or the zoning map are to be considered locked in stone but, are to be periodically reviewed for needed changes.

Ordinances are developed, put to the trial and modified, based on experience. New ordinances need to be developed due to changes in technology or environment. An indication of the need to change an ordinance is if too many variances are approved subject to that ordinance.

RESPONSIBILITIES OF THE ZONING ADMINISTRATOR

The zoning administrator's responsibilities are spelled out in the ordinances. The most time is spent reviewing the normal development proposals and screening those proposals for commission review.

Ideally a building permit for a home should be granted without need of commission review. Setbacks are met, the lot size is adequate, and the lot is correctly zoned. If zoning requires a conditional use permit for the use requested, or if not zoned properly for the requested use, or if a change in setbacks are requested, then the commission must review the building permit application.

In addition, the zoning administrator sees to the enforcement of zoning ordinances, offers technical advice to the commission, processes applications for zoning action, does a great deal of the background research, does the mailings and notifications for the public hearings and the recording of any documents afterwards. The Zoning Administrator also acts as clerk to the Planning Commission.

PUBLIC HEARINGS:

Public Hearings are part of the decision-making process, some types of public hearings are mandated by law while others are held simply to gain public input into an important issue. Statutes outline the minimum requirements for the time frames in which to hold public hearings. A minimum of 10 days notification to the public is needed before any hearing. A commission has a right to hear the formal application proposals at one meeting and then set a time for a hearing at the next regular meeting, however the application must be acted upon within 60 days of receipt or it will automatically be approved (60-Day Rule).

SUMMARY

The Planning Commission serves a vital role in ensuring that the plans for growth and development for the City are followed and changed as needed. Planning Commissioners are encouraged to be open minded and have a desire to see the City of Silver Lake grow in a responsible manner that will continue to make it a great place to live and visit.