



**AGENDA**  
**Planning and Zoning Commission**  
**January 18, 2012**

The Planning Commission, serving a key leadership role as an advisory body to the City Council, reviews and evaluates land use issues utilizing zoning and subdivision regulations to ensure conformity to the Comprehensive Plan and community values, to manage the future growth of Montrose.

**CITY OF MONTROSE**  
**200 Center Avenue South**  
**Montrose, Minnesota 55363**

**7:00PM**      **Call to Order**  
                 **Roll Call**

**Call to order**

**Approval of Agenda**

*Members who wish to delete or add any item(s) to the agenda shall do so at this time.*

**Approval of minutes**

November 16, 2011

**Oath of Office**

Catherine Neiberger

**New Business**

Appointments  
Election of Officers  
Planning Commission Training

**Unfinished business**

**Miscellaneous**

**Adjournment**



**CITY OF MONTROSE  
200 CENTER AVENUE SOUTH  
MONTROSE, MINNESOTA 55363  
PLANNING & ZONING COMMISSION  
NOVEMBER 16, 2011  
MINUTES**

Pursuant to call and notice, the Montrose Planning and Zoning Commission met in regular session on Wednesday, November 16, 2011. Those present were Commissioners, Cory DeWitte, Gerald Lamb, Sylvia Henry and Charles Nelson.

Absent: Georgina Stanley-Woidyla, Chuck Smallwood, Catherine Neiberger

Also present: Kris Richter, staff liaison, Roy Henry, council liaison

**MISSION STATEMENT**

*The Planning Commission, serving a key leadership role as an advisory body to the City Council, reviews and evaluates land use issues utilizing zoning and subdivision regulations to ensure conformity to the Comprehensive Plan and community values, to manage the future growth of Montrose.*

**Agenda**

Motion by Nelson seconded by Lamb, to approve the agenda as presented.  
Carried 4-0.

**Approval of Minutes**

September 21, 2011

Motion by Lamb, seconded by Henry, to approve the minutes as presented.  
Carried 4-0.

**Oath of Office**

Sylvia Henry  
Charlie Nelson

**Public Hearing – Variance 361 Nelson Blvd**

The Public Hearing was opened at 7:03 pm

Kris Richter, staff liaison, reviewed the planners report dated November 16, 2011.

Public Comment: Michael Brenny reviewed his previous submittal to council

Motion by Nelson, seconded by Lamb, to approve the Variance with the conditions in the staff report dated 11-16-11. Carried 4-0

**Adjournment**

Motion by Henry, seconded by Lamb, to adjourn at 7:12pm

Carried 4-0.

Author: Kristine M. Richter  
City of Montrose

Barbara C. Thwing-Swanson  
Administrator/Clerk/Treasurer

## **OATH OF OFFICE**

I, **CATHERINE NIEBERGER**, do solemnly swear that I support the Constitution of the United States of America, the Constitution of Minnesota, and that I will faithfully, justly, and impartially discharge the duties of Planning and Zoning Commissioner for the City of Montrose, Minnesota, to the best judgment and ability, so help me God.

**NAME**

**Planning and Zoning Commissioner**



**Date:** January 12, 2012  
**Memo To:** Planning and Zoning Commission  
**From:** Kris Richter  
**Re:** Planning and Zoning By-Laws  
**Article III MEMBERSHIP**

**Section I** Members shall consist of up to seven voting members to be appointed by the Council and Members shall be appointed for a term of three years. An appointment to fill a vacancy shall be only for the unexpired portion of the term. Each member shall be entitled to one vote.

**Planning and Zoning Appointments:**

**2006**

Tim Hackenmiller  
Keith Roseen  
Cory DeWitte

**2007**

Georgina Stanley-Woidyla

**2010**

Gerald Lamb  
Chuck Smallwood  
Roy Henry

**2011**

Charlie Nelson  
Catherine Neiberger  
Sylvia Henry  
Cory DeWitte

**2012**

Georgina Stanley-Woidyla



To: Montrose Planning Commission

From: Kris Richter

Date: January 12, 2012

Re: Election of Officers

**Background**

The authorization for the establishment of this Planning and Zoning Commission (Commission) is set forth under Minn. Stat. 462.351 through 462.365 amendments and supplements thereto. Powers and duties are delegated to the Commission by the Montrose Municipal Council (Council) by ordinance dated December 10, 1984 in accordance with the above-mentioned enabling law.

**Election Of Officer's**

- Section 1. An annual organization meeting shall be held on the third Wednesday in January at 7:00p.m.
- Section 2. Nominations shall be made from the floor at the annual organizational meeting, and election of the officers specified in Section 10 of Article IV shall follow.
- Section 3. A candidate receiving a majority vote of the entire membership of the Commission shall be declared elected and shall serve for one year.
- Section 4. An elected officer shall be limited to two (2) consecutive terms (years) in his/her current office.
- Section 5. Vacancies in office shall be filled by regular election procedures.

**2011 Planning and Zoning Officers were as follows:**

- Chair - Chuck Smallwood (2 year)
- Vice Chair – Georgina Stanley-Woidyla (2 Year)
- Secretary – Hackenmiller (2 year) Resigned 2011
- Treasurer – DeWitte (2 Year)



**NORTHWEST ASSOCIATED CONSULTANTS, INC.**

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Telephone: 763.231.2555 Facsimile: 763.231.2561 planners@nacplanning.com

**MEMORANDUM**

TO: Montrose Planning Commission  
FROM: Bob Kirmis  
DATE: January 3, 2012  
RE: Montrose - Planning Commission Training  
FILE NO: 273.02

Attached, please find materials to be discussed at the forthcoming Planning Commission training session to be held on January 18, 2012.

While such training is intended primarily for new Commission members, it is hoped a review of the material will be worthwhile to all.

The attached training materials include information related to the comprehensive plan, rezoning (and zoning) amendments, conditional use permits, variances, findings of fact and the 60 day rule.

Your review of this material in advance of the meeting would be appreciated.

C. Barb Swanson  
Kris Richter  
Justin Kannas

## **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 on, 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 will include 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 standards for considering the rezoning are specific, 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.*

Until 2001, all zoning amendments required a super-majority for enactment - 2/3 of the City Council members eligible to vote. For the typical 5-member City Council, 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 four members by a vacancy on the Council, or a member who is considered ineligible due to a conflict of interest, the requirement is 2/3 of the remaining eligible members.

In 2001, the legislature adopted a new law that changes the voting requirements on certain rezoning actions. Now, rezoning land from commercial or industrial to residential requires a simple majority. Rezoning land from

residential to commercial or industrial continues to require the super-majority as discussed above.

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.

In the metropolitan area, it is a statutory requirement that zoning is consistent with the Comprehensive Plan. While this is a good idea in non-metro communities, it is not required. Instead, in the case of conflicts, the continuing rule is that zoning supercedes the Plan.

Zoning amendments are occasionally litigated. The standard of review is "rational basis", and the basis cities should have 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 (CUP's) 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).

Montrose's 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 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.*
- ii. *The proposed use is or will be compatible with present and future land uses in the area.*
- iii. *The proposed use conforms with all performance standards contained in the Zoning Ordinance.*
- iv. *The proposed use can be accommodated with existing public services and will not overburden the City's service capacity.*
- v. *Traffic generation by the proposed use is within capabilities of streets serving the property.*

The second set of conditions may be applied which the City Council considers necessary to protect the surrounding area. 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 the neighborhood and the Comprehensive Plan.

## Variances

**Variance** - An approved departure from the standard imposed by a (usually) 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.

Variances are intentionally made to be 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 enact 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.

The primary considerations for variance review are as follows:

- (1) *That because of the particular physical surroundings, shape, or topographical conditions of the specific parcel of land involved, practical difficulties to the owner would result in putting the property to a reasonable use, as distinguished from a mere inconvenience, if the strict letter of the regulations were to be carried out.*
- (2) *That the conditions upon which an application for variance is based are unique to the parcel of land for which the variance is sought and are not applicable, generally, to other property within the same subdivision.*
- (3) *That the purpose of the variance is not based exclusively upon a financial question, or a desire to increase the value or income potential of the parcel of land.*
- (4) *That the alleged practical difficulty is caused by the ordinance and has not been created by any persons having an interest in the parcel of land and is not a self-created hardship.*

- (5) *That the granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.*
- (6) *That the proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire or endanger the public safety.*
- (7) *That the requested variance is the minimum action required to eliminate the practical difficulties.*
- (8) *That the variance is not to allow a use that is not allowed in the respective zoning district*

In the analysis of a variance, the City no longer needs to find that the variance is necessary to allow *any* reasonable use – just that the proposed use is a reasonable one, given the conditions of the property, the general intent of the zoning regulations, and the character of the neighborhood. The “**practical difficulty**” terminology is generally understood to mean that in a particular circumstance, the ordinance will not allow something that is otherwise a reasonable way to develop the property, according to the tests listed above. Still, for consistency, it is best to adjust the ordinance when the conditions are common, rather than regulate by variance.

It is important to notice that each of these standards must be met in order to qualify for variance consideration. Variances should be routinely put to this test in order that the City applies its ordinances equally. 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.

## **Findings of Fact**

**Findings of Fact** - The legal 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 there is a rational basis for the regulation, and 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 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 Council members 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.

## “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 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. If done, the 60 day calendar period does not begin until the application is complete. Often, an application will not have included a particular required plan or will have some other defect. 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 can not, 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 can not “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. However, most Cities apply the 60-day rule to subdivisions just to be on the safe side.

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.