



**AGENDA FOR THE PLANNING
COMMITTEE MEETING**

**CITY OF BIRCHWOOD VILLAGE
WASHINGTON COUNTY, MINNESOTA
August 28th, 2025
7 P.M.**

Planning Committee Members:

**Andy Sorenson, Chair
Ben Wikstrom, City Planner
Casey Muhm, Member
Michael McKenzie, Member
Michelle Maiers, Member
Mike Kramer, Secretary
Ryan Hankins. Council Liaison**

CALL TO ORDER

ROLL CALL

OPEN PUBLIC FORUM - *Matters presented in the Open Forum are limited to five (5) minutes. The Planning Commission will not debate issues but may direct Staff to provide information. Any matter that requires additional time or consideration by the Planning Commission may be tabled until a future meeting.*

APPROVE PRIOR MEETING MINUTES

REGULAR AGENDA

1. Propose Amending City Code, Section Zoning 303.030*
Purpose: Consider amending this code to help in establishing a clear and consistent deadline for the distribution of agendas and supporting materials for Planning Commission members prior to their meeting
2. Discussion Regarding Planning Commission Duties and Responsibilities

Handouts to Consider for Use/Guidance/Learning: *
 - a. League of MN Cities Chapter 13, Comprehensive Planning, Land Use, and City Owned Land Guide
3. Discussion regarding potential ordinance changes. (Ben Wikstrom)

ADJOURN

* Denotes items that have supporting documentation provided

MEETING MINUTES (Draft)

Birchwood Planning Commission Special Meeting

City Hall - 6:45 PM Special Meeting 3/6/2025

Submitted by Michelle Maiers-Atakpu – acting secretary

COMMISSIONERS PRESENT: — Andy Sorenson - Chairman, Michelle Maiers-Atakpu, Michael Kraemer (via Zoom)

COMMISSIONERS ABSENT: Michael Kraemer, Casey Muhm

OTHERS PRESENT: Council Member Ryan Hankins, Ben Wikstrom – City Planner, John Winters, Barb Winters, Joe Galatowitsch, Therese Galatowitsch, Tim Winters (Landscape Contractor for 131 Wildwood), Len Pratt, Kathy Madore, Lisa Madore, Mike Tschida.

CALL TO ORDER: Meeting called to order by Chairman Andy Sorenson at 6:51 PM.

1. PUBLIC FORUM – no speakers regarding 131 Wildwood Ave. After Agenda item ‘a’ was reviewed and voted upon, John Winters, Kathy Madore, and Lisa Madore all spoke to the variance request for 425 Lake Ave. (See comments below)

2. APPROVE AGENDA

- a. Motion by Maiers-Atakpu, 2nd by McKenzie to approve the agenda.
Vote: Yes – 3, No – 0. Motion passed.

3. REGULAR AGENDA

a. Review 6 Variance requests for 131 Wildwood Ave

i. Variance Request #1 – Construction on an Undersized Lot

Discussion:

1. Maiers-Atakpu noted that 131 Wildwood is one of the smaller lots in Birchwood Village and the Planning Commission should be careful not to support any variances that would result in overbuilding on a small lot
2. McKenzie concurred.

Commission Action:

3. Advisory motion by McKenzie and 2nd by Maiers-Atakpu to support the variance request to construct a new home and garage on the Undersized Lot.

Vote: Yes – 3, No – 0. Motion passed.

- ii. Variance Request #2 – Garage east side setback at 5 feet (code calls for 10 feet)

Commission Action:

- 1. Advisory motion by Maiers-Atakpu and 2nd by McKenzie to support the variance request to construct the garage at 5 feet from the property line.

Vote: Yes – 3, No – 0. Motion passed.

- iii. Variance Request #3 – Garage right of way setback at 16 feet (code calls for 30 feet)

Discussion:

- 1. McKenzie noted that the proposed garage will be set back further from Wildwood Avenue right of way than the previous garage. This will improve the condition.

Commission Action:

- 2. Advisory motion by Maiers-Atakpu and 2nd by McKenzie to support the variance request to construct the garage at 16 feet from the right of way.

Vote: Yes – 3, No – 0. Motion passed.

- iv. Variance Request #4 – House west side yard setback at 8.5 feet (code calls for 10 feet)

Discussion:

- 1. Maiers-Atakpu objects to “crowding” the west side of the property and believes the 10 foot setback should be maintained.
- 2. Joe Galatowitsch noted that there are two reasons they are requesting the variance. Currently, as the main floor plan is sketched, the front door would be partially hidden by the garage if the west side 10 foot setback was maintained. He also noted that he is proposing a narrow garage (21 feet wide) to reduce the impact on the front façade at the house. The second reason is that they are proposing living space at the basement level that will require window wells on the west side of the home. More space on the west side of the property would allow for the window wells as well as access along that side of the house.
- 3. It was noted that there has been no objection by the neighboring properties to the 8.5 foot setback.

4. Maiers-Atakpu noted that the front door could be moved to the west to keep it out from behind the garage. The plan could also be redesigned to eliminate the need for the window wells. Or, the house plan could be narrower to comply with the 10 foot setback requirement.

Commission Action:

5. Advisory motion by Maiers-Atakpu to deny the variance request, but there was no 2nd to this motion.
6. Advisory motion by McKenzie and 2nd by Sorenson to support the variance request to construct the home at 8.5 feet from the west property line.
Vote: Yes – 2, No – 1. Motion passed.

- v. Variance Request #5 – House Height of <30 feet (method A)/35 feet max (code calls for no higher than the previous home max height of ~25 feet)

Discussion:

1. It was noted that this variance request is due to the code restrictions of rebuilding on an undersized lot

Commission Action:

2. Advisory motion by McKenzie and 2nd by Maiers-Atakpu to support the variance request to construct a home with a maximum height of 35 feet (as limited by code for new construction)
Vote: Yes – 3, No – 0. Motion passed.

- vi. Variance Request #6 – Retaining walls requested within the 50 foot OHW setback requirement

Discussion:

1. Tim Winters noted that all the walls will be less than 4 feet tall and will be constructed of rectangular shaped ledgestone. This material is more stable than boulders

Commission Action:

2. Advisory motion by Maiers-Atakpu and 2nd by Sorenson to support the variance request to construct 4 foot tall retaining walls – as shown on the plan – within the 50 foot OHW setback.
Vote: Yes – 3, No – 0. Motion passed.

vii. Impervious Surface Coverage permit.

1. Wikstrom noted that no variance is needed for this item since the proposed work is within the provisions of the code.

viii. Proposed Deck on the lakeside

1. Wikstrom noted that this item may come up for Variance when the final construction drawings are submitted to the City for the Building Permit.

ix. Approve Findings of Fact

1. These items were not part of the Planning Commission's deliberations.

b. Review Variance Request for 425 Lake Ave

1. Wikstrom noted that the variance request has been withdrawn at this time. It may be part of the March Regular Planning Commission meeting on March 27, 2025
2. Wikstrom also noted that a variance for less than 4 foot tall boulder retaining walls within the 50 foot OHW setback was approved by the City Council earlier this year. However, now the property owner may change the material and height of the wall. (as shown as part of the Planning Commission meeting packet). This will trigger a revisit of the variance.
3. Even though the variance request has been withdrawn for this meeting, several people were in attendance to make statements under the "Public Forum" portion of the meeting. Wikstrom was not sure that a Public Forum for this project will be a part of the agenda if 425 Lake Ave comes up for variance at the next Planning Commission meeting. So, Sorenson agreed to let them speak.
4. John and Barb Winters (429 Lake Ave) noted that they support the approval of this variance request.
5. Kathy Madore (413 Lake Ave) is concerned about the revised proposal for the retaining wall material and height. It is not known at this time what material is being proposed, or what the revised height will be.
6. Lisa and Kathy Madore both expressed concern over the protection of the 2 mature trees along the property line. Substantial regrading of the site may damage the roots and harm the trees.

7. Maiers-Atakpu noted that the submitted documentation indicated substantial regrading of the site.

4. ADJOURNED at 7:52 PM

a. Motion by Maiers-Atakpu, 2nd by McKenzie to adjourn meeting. Vote: Yes – 3, No – 0. Motion passed.

MEETING MINUTES (Draft)

Birchwood Planning Commission Regular Meeting

City Hall - 7:00 PM Regular Meeting 4/24/2025

Submitted by Michael Kraemer – secretary

COMMISSIONERS PRESENT: – Andy Sorenson, Michael Kraemer, Casey Muhm, , Michelle Maiers-Atakpu

COMMISSIONERS ABSENT: Michael McKenzie

OTHERS PRESENT: City Council Members – Ryan Hankins, Ryan Eisele, Scott Hildebrand, Sue and Mike Tschida, Kathy Madore, Ben Wikstrom, Carson Schifsky, Bridget Sperl

1. CALL TO ORDER: Chairman - Sorenson called meeting to order at 7:00 PM.
2. PUBLIC FORUM
 - a. None
3. APPROVE AGENDA
 - a. Motion by Maiers-Atakpu, 2nd by Kraemer to approve agenda. Vote: Yes -4, No – 0. Motion passed.
4. APPROVE MINUTES – Minutes from March 6, 2025 special meeting were distributed at the meeting but were tabled since no one had a chance to review them.
5. REGULAR AGENDA
 - a. Item A – Variance(s) Review – Retaining Wall Construction 425 Lake Ave.
 - i. Public Hearing
 1. Kathy Madore and Sue Tschida requested retaining wall information details:
 - a. What is the plan for the downspouts from 425 that direct drainage toward north property line.
 - i. Carson Schifsky contractor for 425 Lake Ave responded the drainage would be directed toward lake and away from the property line.
 - ii. He also indicated yard drainage would be captured in rain garden in NE corner of the lakeside yard of 425 lake parcel.
 - ii. Variance #1 – i. 302.050, Impervious Surfaces and Lot Coverage.
 1. Findings of Fact – Review letter from City Engineer – Marcus Johnson dated 4.21.2025 recommended to consider the retaining walls impervious contribution as de minimis.
 2. Advisory Motion by Maiers-Atakpu, 2nd by Muhm: As a result of City Engineer recommendation, it is recommended there is no

need for this variance and the application for variance be waived.

Advisory Vote: Yes – 4, No – 0.

iii. Variance #2 – ii. 302.005.2.a.4, Land Disturbances Activity Standards [no grading or filling shall be permitted within 20 feet of the OHWL of White Bear Lake.

a. Finding of Fact

i. Per Planning Commission Meeting 6.27.2024:

- 1.** The naturally occurring shoreline slope on the property exists within 10' of the OHW, is steep and slope erosion is occurring and ongoing maintenance will remain an issue.
- 2.** The slope of the property, creating the need for the wall and variance are peculiar to the land, is not caused by action of the owner.
- 3.** A retaining wall within the OHWL setback is a reasonable solution and is a reasonable request to mitigate the problem.
- 4.** The retaining wall construction will trigger and provide the opportunity to reconstruction deteriorating existing wooden stairway system.
- 5.** The character of the neighborhood would not be altered with approval of the variance.
- 6.** Neighborhood property values will not be diminished with approval of the variance and construction of the wall.
- 7.** The construction of the wall as proposed will not increase the amount of water draining from the property.
- 8.** The construction of the wall will not impair an adequate supply of light and air to the adjacent properties.
- 9.** The variance was evaluated on its own merits and the decision was not influenced by input from outside parties.
- 10.** The proposed wall construction and resultant site is a reasonable use for the property under the terms of the Zoning Code.

- ii.* (per PC discussion 4.24.2025) disturbances of grading and filling within 20 feet of the OHWL are required to construct the retaining wall solution.

b. Planning Commission Recommendation:

- i.* Advisory Motion by Kraemer, 2nd by Maiers-Atakpu: The City Council consider granting the variance **with conditions**. Advisory vote: Yes – 4, No – 0.
- ii.* **Conditions:** Planning Commission recommendation of approval of the variance is contingent on compliance with the following conditions.
 1. Applicant submit grading and drainage plans and obtain City Engineer approval.
 2. Applicant submit raingarden plans for City Engineer review and gain approval.
 3. Applicant submit detailed retaining wall plans prepared by a certified engineer (as required by City code for walls over 4' in height) for City Engineer review and obtain approval.
 4. Applicant submit plans for stairway and landing replacement and obtain City Engineer approval.
 5. Stairway and landings meet all codes and meet City code for consideration as impervious.
 6. The applicant receives approval of all necessary jurisdictional permits.
 7. The applicant receives approval of the design, calculations, and plans by the City engineer, City planner, and City building official as applicable.
 8. No increase in runoff onto adjacent properties.

- iv.* Variance #3 - ii. 302.055.b7b3, requires protective buffer strip of vegetation at least 16.5' back from OHWL.

a. Finding of Fact

1. Carson Schifsky – Contractor verbally indicated he will move the retaining wall so this variance requirement is not necessary.

2. Advisory Motion by Maiers-Atakpu, 2nd by Muhm to recommend this variance be denied since it is no longer necessary per the contractor's input. Advisory Vote: Yes – 4, No – 0.

ADJOURN 8:40 PM

- b. Motion by Muhm, 2nd by Maiers-Atakpu to adjourn meeting. Vote: Yes - 4, No – 0. Motion passed.

TO: Birchwood Planning Commission

DATE: 8/25/25

FROM: Ryan Hankins

SUBJECT: Proposed Ordinance Amending City Code §303.030 Regarding Planning Commission Meeting Materials

This memo introduces a proposed ordinance to amend Section 303.030 of the City Zoning Code. The purpose of this amendment is to establish a clear and consistent deadline for the distribution of agendas and supporting materials to Planning Commission members prior to their meetings.

CITY OF BIRCHWOOD ORDINANCE NO. 2025-__

AN ORDINANCE AMENDING SECTION 303.030 OF THE CITY ZONING CODE REGARDING THE DISTRIBUTION OF PLANNING COMMISSION MEETING AGENDAS AND MATERIALS

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BIRCHWOOD, MINNESOTA DOES ORDAIN:

SECTION 1. AMENDMENT. Section 303.030 of the Birchwood City Zoning Code, "ORGANIZATION, MEETINGS, MINUTES AND EXPENDITURES," is hereby amended by adding a new subsection to read as follows:

6. Agenda and Meeting Materials. The City Administrator, or their designee, shall provide the complete agenda and all accompanying reports, applications, and informational materials to the members of the Planning Commission no later than seven (7) calendar days prior to any regularly scheduled meeting. All city staff shall submit required information and reports to the staff member responsible for assembling the agenda with sufficient time to meet this distribution deadline. This ensures Commission members have adequate time for review and preparation.

SECTION 3. EFFECTIVE DATE. This ordinance shall be in full force and effect from and after its passage and publication according to law.

Passed and adopted by the City Council of the City of Birchwood this _____ day of _____, 2025.

Mayor

ATTEST:

City Clerk



HANDBOOK FOR MINNESOTA CITIES

Chapter 13

Comprehensive Planning, Land Use and City-Owned Land

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This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

Chapter 13

Comprehensive Planning, Land Use and City-Owned Land

Learn about land use ordinances to establish zoning and subdivision regulations, and city land acquisition through dedication, negotiation and eminent domain. Regulations and acquisition are the two basic methods of city land use control.

RELEVANT LINKS:

Minn. Stat. § 462.351.

See LMC information memo, *Planning Commission Guide*.
See LMC information memo, *Zoning Guide for Cities*.
See LMC information memo, *Subdivision Guide for Cities*.

See LMC information memo, *Planning Commission Guide*.

I. City land use regulation

Cities are granted the authority to regulate land use by the Municipal Planning Act. Cities outside the seven-county metro area are not required to regulate land use. For those cities engaged in land use regulation, the Municipal Planning Act provides the framework and road map that all cities must follow.

Cities regulate land use through three basic tools:

- The comprehensive plan.
- The zoning ordinance.
- The subdivision ordinance.

Cities are not required to adopt all three. However, it is important to note that each tool serves a separate and essential purpose.

These planning, zoning, and subdivision tools interact in important ways to protect and promote the sound development of a city. First, the comprehensive plan helps a city plan for the future. A subdivision ordinance regulates the division of land into smaller lots and the creation of blocks and neighborhoods with safe streets, appropriate environmental features, and character. Finally, the zoning ordinance regulates the use and density of particular similar uses, to prevent congestion, environmental contamination, and other health hazards.

A. Comprehensive planning and planning commissions

1. Purpose of comprehensive planning

A comprehensive plan is an expression of a community's vision for the future and a strategic map to reach that vision.

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

RELEVANT LINKS:

Minn. Stat. § 462.351.
Minn. Stat. § 462.352, subd.
5. See Minn. Stat. § 462.355,
subd. 1a.

Minn. Stat. § 462.352, subd.
8.
Minn. Stat. § 462.352, subd.
7.
Minn. Stat. § 462.352, subd.
8.
Minn. Stat. § 462.352, subd.
9.

Comprehensive planning is not mandatory in cities outside the seven-county metropolitan area. However, comprehensive planning is an important tool for cities to guide future development of land to ensure a safe, pleasant, and economical environment for residential, commercial, industrial, and public activities. In addition, planning can help:

- Preserve important natural resources, agricultural land, and other open lands.
- Create the opportunity for residents to participate in guiding a community's future.
- Identify issues, stay ahead of trends, and accommodate change.
- Ensure that growth makes the community better, not just bigger.
- Foster sustainable economic development.
- Provide an opportunity to consider future implications of today's decisions.
- Protect property rights and values.
- Enable other public and private agencies to plan their activities in harmony with the municipality's plans.

For many cities, creating a comprehensive plan is the first step in adopting zoning and subdivision regulations. As a result, the comprehensive plan normally lays out a vision for the city's future land development and land use, dictating where growth should occur, the type of growth that is allowed in various areas, and the density of such growth. A comprehensive plan also may include a:

- Public or community facilities plan.
- Thoroughfare or transportation plan.
- Parks and open space plan.
- Capital improvement program.

While not all cities are required to adopt a comprehensive plan, a plan is still a good practice. First, once a plan is adopted, it guides local officials in making their day-to-day decisions.

Second, preparing a comprehensive plan prior to the adoption of a zoning or subdivision ordinance affords a city additional legal protections if a particular ordinance provision is challenged in court. Zoning and subdivision ordinances must be reasonable and have a rational basis. Comprehensive plans assist a city in articulating the basis for its legislative decisions. Unless a provision is determined to be without any rational basis, or clearly exceeds a city's authority, the courts will not question the policies and programs contained in a comprehensive or land use ordinance.,

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 2. Minn. Stat. § 462.352, subd. 6. Minn. Stat. § 462.357, subd. 2 (c).

Minn. Stat. § 473.858, subd. 2.

Minn. Stat. § 473.175. Metropolitan Council.

City of Lake Elmo v. Metropolitan Council, 685 N.W.2d 1 (Minn. 2004).

Minn. Stat. § 462.355, subd. 2. See LMC information memos, *Newspaper Publication and Zoning Guide for Cities*, Section V-C-2-b on conducting a public hearing.

Minn. Stat. § 462.355, subd. 3.

If a city does not develop a comprehensive plan prior to adopting a zoning or subdivision ordinance, the ordinances should be adopted in conjunction with extensive, written finding of facts, stating the policy reasons that necessitate the ordinance’s adoption.

2. Procedure for adopting a comprehensive plan

a. Seven-county metro area plan review: adjacent units of government

Cities within the seven-county metro area must submit their comprehensive plan to the Metropolitan Council. At least six months prior to the submission of a proposed comprehensive plan to the Metropolitan Council, cities must submit their proposed comprehensive plans to adjacent governmental units and affected school districts for review and comment.

b. Seven-county metro area plan review: Metropolitan Council

Cities in the seven-county metropolitan area must submit their comprehensive plan to the Metropolitan Council for review of its compatibility and conformity with the Council’s regional system plans. When the Metropolitan Council determines that a city’s comprehensive land use plan may have a substantial impact on or contain a substantial departure from the Metropolitan Council’s regional system plans, the Council has the statutory authority to require the city to conform to the Council’s system plans.

c. All cities: public hearing requirements

Prior to adoption of a comprehensive plan, the planning commission must hold at least one public hearing. A notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the municipality at least 10 days before the day of the hearing.

d. Vote requirements

Unless otherwise provided in a city charter, the city council may, by resolution and by a two-thirds vote of all its members, adopt and amend the comprehensive plan or a portion of the plan. This means that on a five-member council, the comprehensive plan must receive at least four affirmative votes.

RELEVANT LINKS:

See Section I-B-2 *Adopting the Comprehensive Plan*. Minn. Stat. § 462.355, subd. 3. See LMC information memo, *Zoning Guide for Cities*, Section V-C-2-b on conducting a public hearing.

Minn. Stat. § 473.175. Metropolitan Council.

Minn. Stat. § 462.355, subd. 3.

Minn. Stat. § 462.355, subd. 3.

See Section I-D-3 on *The 60-Day Rule*, also LMC information memo, *Zoning Guide for Cities*, Section V-A, *The 60-Day Rule*.

Minn. Stat. § 15.99. *Manco of Fairmont v. Town Bd. of Rock Dell Township*, 583 N.W.2d 293 (Minn. Ct. App. 1998). *Hans Hagen Homes, Inc. v. City of Minnetrista*, 728 N.W.2d 536 (Minn. 2007).

The one exception is that if the amendment is to permit affordable housing development, a simple majority of all members is sufficient to amend the comprehensive plan.

3. Procedure for amending a comprehensive plan

In amending a comprehensive plan, cities must follow the same procedure for adoption of a new plan. The planning commission must hold at least one public hearing on the amendment preceded by published notice.

Cities in the seven-county metro area must submit all amendments to their comprehensive plans to the Metropolitan Council for review.

Unless otherwise provided by charter or amendments to permit affordable housing development, all amendments to the comprehensive plan must be approved by a two-thirds vote of the city council.

After a city has adopted a comprehensive plan, all future amendments to the plan must be referred to the planning commission for review and comment. No plan amendment may be acted upon by the city council until it has received the recommendation of the planning commission, or until 60 days have elapsed from the date an amendment proposed by the city council has been submitted to the planning commission for its recommendation.

In submitting review and comment to council, the planning commission serves in a strictly advisory role. The city council ultimately decides on the acceptance, rejection, or revision of the plan, and is not bound by planning commission recommendations.

4. The 60-Day Rule and comprehensive plan amendments

Cities generally have only 60 days to approve or deny a written request relating to zoning, including applications to amend the comprehensive plan that are not initiated by the city council or city planning commission. This requirement is known as the “60-Day Rule.”

The 60-Day Rule is a state law that requires cities to approve or deny a written request relating to zoning within 60 days, or it is deemed approved. The purpose of the rule is to keep governmental agencies from unnecessarily delaying land use issues. Minnesota courts have generally demanded strict compliance with the rule.

RELEVANT LINKS:

Establishing A Planning Commission, LMC Model Ordinance.

Minn. Stat. § 462.355, subd. 1.
Minn. Stat. § 462.355, subd. 2.

See LMC information memo, *Planning Commission Guide*.

Minn. Stat. § 462.358, subd. 1(a), 2(a).
See LMC information memo, *Subdivision Guide for Cities*.

Minn. Stat. § 462.358, subd. 2(a).

5. Planning commissions

Cities may, by ordinance, establish a planning commission. The ordinance should include the commission’s features, powers and duties. Once created, the planning commission plays an important role in city land use regulation. The planning commission is vested by state statute with the duty of preparing and maintaining the city comprehensive plan. However, the city council may also propose the comprehensive municipal plan and amendments to the plan by a resolution submitted to the planning commission. When this occurs, the council may not adopt the recommended language until it has received a report from the planning commission or 60 days have elapsed.

State statutes prescribe several other mandatory duties for a planning commission. City ordinance should be drafted to include these duties. In addition, state statute permits some optional duties to be assigned to the planning commission. City ordinance should clearly provide which of these optional duties are assigned to the planning commission. Since state statute contains optional duties, general ordinance language stating that commission duties “shall be as established by state statute” may cause confusion and should be avoided. The powers and duties of the planning commission are discussed more extensively in the LMC governing and managing memo *Planning Commission Guide*.

B. Subdivision regulations

1. The purpose of subdivision regulations

Cities may regulate the subdivision of land through a subdivision ordinance. Developers who seek to subdivide larger tracts of land into smaller parcels for development and/or sale must follow the city’s subdivision regulations. These regulations specify a city’s related to size, location, grading, and improvement of:

- Lots.
- Structures.
- Public areas, trails, walkways, and parks.
- Streets and street lighting.
- Installations necessary for water, sewer, electricity, gas, and other utilities.

Subdivision regulations allow cities to ensure that a new development or redevelopment meets the standards necessary for a safe, functional, and enjoyable community. Importantly, subdivision regulations can help the city preserve and protect vital natural resources.

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 10.
Minn. Stat. § 473.121, subd. 2.
Minn. Stat. § 473.865.
Minn. Stat. § 473.859, subd. 4.

Minn. Stat. §§ 462.351-365.
Minn. Stat. § 462.352, subd. 14.
Minn. Stat. § 462.358, subd. 1(a).

Minn. Stat. § 462.358, subd. 2b.

See LMC information memo, *Newspaper Publication*.
See Handbook, *Meetings, Motions, Resolutions and Ordinances*.

Without subdivision regulations, a city’s authority to control development is limited. Without city subdivision regulations, developers do not have any constraint on the subdivision of land and the location of streets and utilities in developments. In these situations, developers may be tempted to maximize their potential profits at the expense of quality. For example, they may create too many small lots for sale, develop cheaper streets that are too narrow and unsafe, or build homes on inappropriate soils where flooding or erosion may occur.

When there are problems with a completed development, there is a potential that the city will need to step in and correct issues that affect the health, safety, and welfare of residents. When a city must repair or replace streets, infrastructure, and utility lines, the costs are often passed along to homeowners through special assessments, potentially creating financial hardship for the homeowners in the subdivision.

State law does not require cities outside the metropolitan area to adopt subdivision regulations. Metropolitan cities must adopt subdivision regulations under and in conformance with the Metropolitan Land Planning Act.

2. Procedure for adopting and amending subdivision regulations

Subdivision regulations can only be imposed by a local ordinance adopted in accordance with the Municipal Planning Act. Unlike with zoning regulations, cities are not required to hold a public hearing or provide published or mailed notice prior to adopting or amending their subdivision regulations.

An ordinance may be adopted and amended by a simple majority vote of the council. Cities should follow their regular publication requirements. If the subdivision regulations require dedication of buildable land for streets, sewers, parks, utilities, recreational facilities, playgrounds, trails, wetlands, or open space, the city must first have in place either:

(1) a capital improvement budget and a parks and open space plan; or (2) a parks and open space plan as a component of its comprehensive plan.

In statutory cities, ordinances and ordinance amendments must be published once in the city’s official newspaper. A statutory city may also choose to publish a summary of lengthy ordinances, provided that certain legal requirements are met.

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 505.03, subd. 1.

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).
Jordan Real Estate Services, Inc. v. City of Gaylord, No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision).
LMC information memo, *Taking the Mystery Out of Findings of Fact*.

Minn. Stat. § 462.358, subd. 3b.
Calm Waters, LLC v. Kanabec County Bd. of Com'rs, 756 N.W.2d 716 (Minn. 2008) (applies 60-Day Rule tolling only to county review of subdivisions).

Minn. Stat. § 462.358, subd. 3b. LMC information memo, *Zoning Guide for Cities*, Section V-C-2-b on conducting a public hearing.

Minn. Stat. § 462.358, subd. 3b.

3. Administering a subdivision ordinance

a. Process for review

A city's subdivision ordinance must establish the process for review of applications related to subdividing land. Generally, subdivision application approval is a two-part process. First, the landowner applies for preliminary plat approval, and subsequently, for final plat approval. Cities may opt to consolidate these two reviews and/or provide for administrative review of plats that delineate existing parcels and minor subdivisions. However, the two-step process is the most widely used process. Each approval process has its own mandatory timeline for approval.

b. 120 Days: Timelines for preliminary plat approval

The preliminary plat approval stage establishes the nature, design, and scope of a development project. It sets the conditions or guidelines, in large part, under which final plat approval can be obtained. After a plat is preliminarily approved, changes should generally be limited to meeting requirements imposed as a condition of approval and to meeting legal requirements under city ordinance and state or federal law. As a result, the “preliminary” title can be misleading—this is the most important phase of the approval process.

A subdivision application must receive preliminary approval or disapproval within 120 days of its delivery unless the applicant agrees to an extension. If no action is taken, the application will be deemed approved after this time period. (Note that this 120-day period differs from the usual 60-Day Rule. The 60 Day Rule in Minn. Stat § 15.99 by its terms does not apply to city subdivision regulations). The city should document all extensions in writing. If the city does not act on an application within 120 days, the applicant may demand a certificate of approval from the city. Following receipt of the certificate, the applicant may request final approval by the city as discussed below.

The city must hold a public hearing on all subdivision applications prior to preliminary approval, following publication of a notice at least 10 days before the hearing.

c. 60 Days: Timelines for final plat approval

After preliminary plat approval, state statute allows the applicant to seek final approval.

RELEVANT LINKS:

Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).
Jordan Real Estate Services, Inc. v. City of Gaylord, No. A08-0294, (Minn. Ct. App. April 14, 2009) (unpublished decision).

Minn. Stat. § 462.358, subd. 3b.

Minn. Stat. § 462.358, subd. 2(b). *Collis v. City of Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). *Kotschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App., 1995).

Minn. Stat. § 462.358, subd. 2b (e). Minn. Stat. § 462.358, subd. 2c. *Collis v. City of Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). *Kotschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995).

The final plat application must demonstrate conformance with the conditions and requirements of preliminary approval and conformance with city regulations and state and federal law. Unlike preliminary plat approval, there is no required public hearing on the final plat.

Once an applicant has requested final approval, the city must approve or disapprove of the application in 60 days. If the city fails to act within 60 days, the final plat application is automatically deemed approved.

4. Dedication requirements and park dedication fees

A subdivision ordinance may require a subdivision applicant to dedicate a reasonable portion of land within the development to the public to address infrastructure needs created by the development. Cities may require dedication of land to the public for numerous uses, including:

- Streets, roads, and alleys.
- Water, sewer, and similar facilities.
- Gas, electric, and similar facilities.
- Storm water drainage and hold areas or ponds.
- Parks, recreational facilities, and playgrounds.
- Trails and sidewalks.
- Wetlands and wetland preservation.
- Open space.

When the city requires land to be dedicated within a specific subdivision, it must determine that:

- The city reasonably needs to acquire the specific portion of land for reasons permitted by state statute (e.g., streets, parks, utilities) as a result of approval of the subdivision (this is sometimes referred to as a nexus requirement).

RELEVANT LINKS:

Minn. Stat. § 462.358, subd. 2c. *Collis v. City of Bloomington*, 310 Minn. 5, 246 N.W.2d 19 (Minn. 1976). *Middlemist v. City of Plymouth*, 387 N.W.2d 190 (Minn. Ct. App. 1986). *Kotschade v. City of Rochester*, 537 N.W.2d 301 (Minn. Ct. App. 1995).

Minn. Stat. § 462.358, subd. 2b(d).

Minn. Stat. § 462.358, subd. 2b(e).

See LMC information memo, *Subdivision Guide for Cities*.

Puce v. City of Burnsville, 997 N.W.2d 49 (Minn. 2023).

Minn. Stat. § 462.358, subd. 2b(c).

See LMC information memo, *Subdivision Guide for Cities*.

Minn. Stat. § 462.358, subd. 2a.
See LMC information memo, *Subdivision Guide for Cities*.

- The need created by the subdivision is roughly proportional to the city’s dedication requirement. For example, in a five-house subdivision, it may be reasonable to require dedication of park land for a small, local swing set park. It may not be reasonable to require the same small subdivision to dedicate multiple acres for a community park serving hundreds of city residents.
- The need for the dedicated land has not already been offset or obviated by other actions of the developer in setting aside for public use other open space, recreational, or common areas, or other facilities within the development.

In lieu of land dedication for parks, recreational facilities, playgrounds, trails, wetlands, or open space, cities may require a developer to pay “cash fees” commonly referred to as “park dedication fees” or “trail fees” (cumulatively referred to as park dedication fees in the rest of this memo). Park dedication fees excuse a developer from a local land dedication for park and recreational purposes, but still allow the city to purchase and acquire new, off-site facilities to serve needs created by the subdivision. When a city establishes and imposes a park dedication fee, in lieu of land dedications, it must still comply with all the requirements discussed above for land dedications related to procedure, nexus, and proportionality.

State statute requires cities to follow a specific formula for setting park dedication fees. Cities should retain the services of a land appraiser, or some other professional, to help them determine the appropriate rate for their park dedication fees.

5. Required public improvements and development agreements

a. Required public improvements

A city subdivision ordinance may condition approval of an application upon the construction and installation of needed public improvements for the subdivision such as:

- Drainage facilities.
- Streets.
- Electric, gas, sewer, water, and similar utilities.

A city may require that the developer install the improvements to the city’s specifications as detailed in the subdivision ordinance.

RELEVANT LINKS:

Harstad v. City of Woodbury,
916 N.W.2d 540 (Minn.
2018).

Minn. Stat. § 462.358 subd.
2a.

See LMC information memo,
Subdivision Guide for Cities.

Harstad v. City of Woodbury,
916 N.W.2d 540 (Minn.
2018).

For example, a city may specify the width and composition of any streets installed by the developer. In addition, to ensure that the improvements are installed correctly and completely, the city may condition approval upon both of the following conditions:

- Providing a cash deposit, certified check, irrevocable letter of credit, bond, or some other type of financial security in an amount sufficient to ensure that the required improvements will be completed as specified.
- The signing of a development agreement between the city and the developer, which may be enforced by legal and equitable remedies in a court.

A statutory city cannot condition approval on the payment of a cash fee to the city to be used by the city for the future construction of public improvements. Such a cash fee is not considered a cash deposit or other financial security.

Cities are not required to condition approval upon developer installation of needed improvements. Cities may also install the improvement themselves, with the option to recoup the costs through special assessments.

b. Development agreements

A subdivision ordinance may provide that the city condition approval of an application on any requirements reasonably related to the city's regulations. These requirements may be reduced to a written contract known as a development agreement. Once executed, a development agreement may be enforced by all legal and equitable remedies in a court of law.

Written development agreements are the city's most important tool to enforce the expectations of the city's subdivision regulations. State law does not dictate the contents of a development agreement. However, a city's authority to enter into development agreements does not include the ability to require the payment of a cash fee to the city for the future construction of public improvements.

Since a development agreement implicates important legal rights for the city, these contracts are typically drafted with the advice and assistance of the city attorney. Development agreements are usually recorded with the county after execution.

RELEVANT LINKS:

Minn. Stat. § 462.351.
See LMC information memo,
Zoning Guide for Cities.
See also LMC information
memo, *Zoning Decisions*.

Minn. Stat. § 462.357, subd.
1.

Minn. Stat. § 462.357, subd.
1.

See LMC information memo,
Zoning Guide for Cities.
A.G. Op. 59-A-32 (Jan. 25,
2002). *Pilgrim v. City of
Winona*, 256 N.W.2d 266
(Minn. 1977).

City of Wacoma v. Dock, 961
N.W.2d 220 (Minn. 2021).

Minn. Stat. § 462.357, subd.
3. For info on conducting
hearings, see LMC
information memo, *Zoning
Guide for Cities*, Section V-
C-2-b.

C. Zoning regulation

1. The purpose of zoning regulation

Zoning allows a city to control the development of land within the community—the type of structures that are built, the density of structures, and the uses to which the land is put. Zoning seeks to segregate and combine (where appropriate) residential, commercial, and industrial uses in order to promote the best use of land for the health and welfare of the city’s residents.

Zoning is normally accomplished by dividing the land in the city into different districts or zones each with unique regulations. Generally, specific districts are set aside for residential uses, certain types of commercial uses, and various industrial uses. The city can also use zoning to further agricultural and open space objectives.

By creating zoning districts that separate uses, the city assures that adequate space is provided for each use and that a transition area exists between distinct and incompatible uses. Adequate separation of uses prevents congestion, minimizes fire and other health and safety hazards, and keeps residential areas free of potential commercial and industrial nuisances such as smoke, noise and light.

Zoning regulations may also constrain the types and location of structures. The regulations must be the same within each district, but may vary from district to district.

2. Procedure to adopt and amend a zoning ordinance

The Municipal Planning Act establishes a uniform and comprehensive procedure for adopting or amending and implementing a zoning ordinance. Zoning regulations can only be imposed by a local ordinance. The Minnesota Supreme Court has held that cities must follow these procedures not only for traditional zoning ordinances, but any ordinance that functions as a zoning ordinance and touches on subjects governed by the Municipal Planning Act.

a. Public hearing requirements

A public hearing must be held by the council or the planning commission (if one exists) before a city adopts or amends a zoning ordinance.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 3. See LMC information memo, *Newspaper Publication*.

Minn. Stat. § 462.357, subds. 2, 5.

A.G. Op. 59-A-32 (Jan. 25, 2002).

Minn. Stat. § 412.191, subd. 4. Minn. Stat. § 331A.02. Minn. Stat. § 331A.04. See Handbook, *Meetings Motions Resolutions and Ordinances*.

See LMC information memo, *Zoning Guide for Cities, Section V-A, The 60-Day Rule*.

(1) Notice and hearing

A notice of the time, place, and purpose of the hearing must be published in the official newspaper of the municipality at least 10 days prior to the day of the hearing.

If an amendment to a zoning ordinance involves changes in district boundaries affecting an area of five acres or less, a similar notice must be mailed at least 10 days before the day of the hearing to each owner of affected property and property situated completely or partly within 350 feet of the property to which the amendment applies. Failure to give mailed notice to individual property owners or defects in the notice shall not invalidate the proceedings, provided that a genuine attempt to comply with the requirement has been made.

Following the public hearing, the planning commission (if one exists) must review the proposed zoning ordinances and any comments from the public hearing. The planning commission may make any appropriate and reasonable revisions to the proposed zoning ordinance. The planning commission must then present the zoning ordinance and any amendments in final draft form and a report to the council.

If there is no planning commission, the city council reviews and address comments from the public hearing and make any appropriate and reasonable revisions. Zoning ordinances must be adopted by a majority vote of the entire council. For example, this would mean three votes on a five-member council. A Minnesota attorney general opinion has found that charter cities may not provide for different voting requirements, because the Municipal Planning Act supersedes inconsistent charter provisions.

b. Publication

After adopting or amending a zoning ordinance, the council must publish or summarize it in the official newspaper.

3. Administering a zoning ordinance

a. The 60-Day Rule: Strict timelines for review

Most importantly in administering a zoning ordinance, cities must remember that they must comply with the “60-Day Rule.”

RELEVANT LINKS:

Minn. Stat. § 15.99.
Manco of Fairmont v. Town Bd. Of Rock Dell Township, 583 N.W.2d 293 (Minn. Ct. App. 1998).
Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007).

Minn. Stat. § 15.99.

Minn. Stat. § 15.99, subd. 2(a). Minn. Stat. § 462.358, subd. 3b.
Advantage Capital Mgmt. v. City of Northfield, 664 N.W.2d 421 (Minn. Ct. App. 2003). *State v. Samschagrin*, 952 N.W.2d 620 (Minn. 2020).

Minn. Stat. § 15.99, subd. 1(c).

Minn. Stat. § 15.99, subd. 3(a).

Minn. Stat. § 15.99, subd. 3(c).

Tollefson Dev., Inc. v. City of Elk River, 665 N.W.2d 554 (Minn. Ct. App. 2003).
Matter of USS Water Town Solar LLC, No. A19-1148 (Minn. App. July 27, 2020 (unpublished opinion)).

The 60-Day Rule is a state law requiring cities to approve or deny a written request relating to zoning within 60 days. Failure to act within 60 days results in automatic approval of a request. The purpose of the rule is to keep governmental agencies from taking too long in deciding land use issues. Minnesota courts have generally demanded strict compliance with the rule.

(1) The scope of the rule

The rule applies to any “request related to zoning.” The courts have been rather expansive in their interpretation of the phrase “related to zoning,” and many requests affecting the use of land have been treated as subject to the law. The statute creates an exception for subdivision and plat approvals since those processes are subject to their own timeframes. The Minnesota Court of Appeals has ruled that Minn. Stat. § 15.99 does not apply to building permits.

(2) Applications

In order to trigger the 60-Day Rule a request must be submitted in writing on the city’s application form, if one exists. A request not on the city’s form must clearly identify on the first page the approval sought. The city may reject as incomplete a request not on the city’s form, if the request does not include information required. The request is also considered incomplete if it does not include the required application fee.

The 60-day time period does apply if a city notifies the landowner in writing within 15 business days of receiving an application that it is incomplete. A city must inform the applicant of what information is missing.

If a city approves a request within 60 days—and the city documents this—it meets the time limit even if that approval adds conditions the applicant must meet. Subsequently, if the applicant fails to meet the conditions, the approval may be revoked or rescinded.

An applicant cannot use the revocation or rescission to claim the city did not meet the 60-day time limit.

When a zoning applicant materially amends an application, the 60-day period runs from the date of the written request for the amendment, not from the date of the original application. However, minor changes to a zoning request should not affect the running of the 60-day period.

RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 2(a).

Minn. Stat. § 15.99, subd. 2(c).
Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536 (Minn. 2007).
Johnson v. Cook County, 786 N.W.2d 291 (Minn. 2010).

Minn. Stat. § 15.99, subd. 2(b).

Minn. Stat. § 15.99, subd. 3(f).

American Tower, L.P. v. City of Grant, 636 N.W.2d 309 (Minn. 2001). *Northern States Power Co. v. City of Mendota Heights*, 646 N.W.2d 919 (Minn. Ct. App. 2002). *Matter of USS Water Town Solar LLC*, No. A19-1148 (Minn. App. July 27, 2020 (unpublished opinion)).

Minn. Stat. § 15.99, subd. 3(g).

Minn. Stat. § 15.99, subd. 3(f)(g).

(3) Denials

If a city denies a land use request, it must give written reasons for the denial at the time it denies the request. When a multimember governing body such as a city council denies a request, it must state and provide the applicant with a written statement of the reasons for denial. The written statement of the reasons for denial must be consistent with reasons stated in the record at the time of denial. The written statement of reasons for denial must be provided to the applicant upon adoption.

State statute provides that the failure of a motion to approve an application constitutes a denial, provided that those voting against the motion state on the record the reasons why they oppose the request. This situation usually occurs when a motion to approve fails because of a tie vote, or because the motion fails to get the required number of votes to pass.

(4) Extensions

The law allows a city the opportunity to give itself an additional 60 days (up to a total of 120 days) to consider an. In order to avail itself of an additional 60 days, the city must give all of the following to the applicant:

- Written notification of the extension before the end of the initial 60-day period.
- The reasons for extension.
- The anticipated length of the extension.

The courts have been particularly demanding on local governments regarding extension requirements and have required local governments to meet each element of the statute. An oral notice or an oral agreement to extend is insufficient. The reasons stated in the written notification should be specific and inform the individual applicant exactly why the process is being delayed. Needing more time to fully consider the application may be an adequate reason.

As demonstrated in one Minnesota Supreme Court case, the written notification should not take the form of a blanket statement on the zoning application that the city will need the extension.

An applicant may also request an extension of the time limit by written notice. If a city receives an applicant request for an extension, the request for the extension should be thoroughly documented.

Once the city has granted itself one 60-day extension, additional extensions must be negotiated with the applicant. A city can only go beyond 120 days if it gets the approval of the applicant.

RELEVANT LINKS:

Minn. Stat. § 15.99, subd. 3(d)(e).

Minn. Stat. ch. 116D.
Minn. R. ch. 4410.

Minn. Stat. § 15.99, subd. 2(a).

See LMC information memo, *Zoning Guide for Cities*, Section V-A, The 60-Day Rule.

Stodola v. City of Orono, No. C2-93-2445 (Minn. Ct. App. 1994) (unpublished decision).

Minn. Stat. § 462.3595.
See LMC information memo, *Land Use Conditional Use Permits*.

Upper Minnetonka Yacht Club v. City of Shorewood, 770 N.W.2d 184 (Minn. Ct. App. 2009).

See LMC information memo, *Zoning Guide for Cities*.
See LMC information memos, *Land Use Conditional Use Permits*.
Trisko v. City of Waite Park, 566 N.W.2d 349 (Minn. Ct. App. 1997).

The city must initiate the request for additional time in writing and have the applicant agree to an extension in writing. The applicant may also ask for an additional extension by written request.

The 60-day time period is also extended if a state statute requires a process to occur before the city acts on the application making it impossible for the city to act within 60 days. The environmental review process is an example. If a city or state law requires the preparation of an environmental assessment worksheet or an environmental impact statement under the state Environmental Policy Act, the deadline is extended until 60 days after the environmental review process is completed. Likewise, if a proposed development requires state or federal approval in addition to city action, the 60-day period for city action is extended until 60 days after the required prior approval is granted from the state or federal entity.

On occasion, a local city zoning ordinance or charter may contain similar or conflicting time provisions. The 60-Day Rule generally supersedes those time limits and requirements.

Cities should adopt procedures to ensure planning staff, the planning commission, and the city council follow the 60-Day Rule. City staff should develop a timetable, guidelines, and forms (checklists for each application may be helpful) to ensure that no application is deemed approved because the city could not act fast enough to complete the review process.

b. Uses and conditional uses

A key feature of zoning ordinances is to divide areas of the city into districts and then list the permitted and conditional uses. Permitted uses are those that the zoning ordinance allows without prior approval.

Conditional uses are those activities that the zoning ordinance permits if certain conditions set forth in the city ordinance are met. The city must grant a conditional use permit (CUP) if the applicant satisfies all the conditions expressed in a zoning ordinance.

Conditional uses remain in effect indefinitely if the use complies with the conditions. Once issued, a CUP's conditions may not be unilaterally altered by the city, unless a violation of the CUP has occurred.

It is important to stress that conditional uses, like permitted uses, must be allowed if the applicant can prove that the application meets all the conditions and requirements of a city's ordinance. As a result, the list of conditional uses should only contain uses that the city is certain should be allowed once appropriate conditions are met. Neighborhood opposition alone does not authorize the rejection of a CUP application.

RELEVANT LINKS:

See LMC information memo *Zoning Guide for Cities* for more information on variances.
See LMC information memo *Land Use Variances*.

Minn. Stat. § 462.357, subd. 6.

c. Variances

A variance is a way for a city to allow an exception to the strict requirements of a zoning ordinance. A variance is generally for a dimensional standard (such as setbacks or height limits). A variance may not be used to allow a use that is prohibited in a zoning district. Essentially, a variance allows the landowner to break a dimensional zoning rule that would otherwise apply.

The law provides that requests for variances are heard by the board of adjustment and appeals. In many communities, the planning commission serves this function. Generally, the board's decision is subject to appeal to the city council.

A variance may be granted if enforcement of a zoning ordinance provision as applied to a particular piece of property would cause the landowner "practical difficulties." Whether the applicant would be caused practical difficulties is determined by the statutory three-factor test.

If the applicant does not meet all three factors of the statutory test, a variance should not be granted. Also, variances are only permitted when they are in harmony with the general purposes and intent of the ordinance, and when the terms of the variance are consistent with the comprehensive plan.

The practical difficulties test consists of the following three criteria.

- The property owner proposes to use the property in a reasonable manner, but one which is not allowed by the city's zoning ordinance.
- The landowner's situation is due to circumstances unique to the property not caused by the landowner. Uniqueness generally relates to the physical characteristics of the particular piece of property and economic considerations alone "do not constitute practical difficulties."
- The variance, if granted, will not alter the essential character of the locality. This factor generally contemplates whether the resulting structure will be out of scale, out of place, or otherwise inconsistent with the surrounding area.

If a variance applicant can demonstrate the practical difficulties test is met, that the variance would be in harmony with the general purposes and intent of the zoning ordinance, and that the variance is consistent with the comprehensive plan, the city may grant the variance.

RELEVANT LINKS:

Minn. Stat. § 462.357, subd. 1e.
See LMC information memo *Zoning Guide for Cities* for more information on nonconformities.
See LMC information memo *Land Use Nonconformities*.

Minn. Stat. § 462.357, subd. 1e.

AIM Development (USA), LLC v. City of Sartell, 946 N.W.2d 330 (Minn. 2020).

Ortell v. City of Nowthen, 814 N.W. 2d 40 (Minn. Ct. App. 2012).

Minn. Stat. § 462.357, subd. 1e(c),(d)-(j).

See LMC information memos, *Zoning Guide for Cities and Subdivision Guide for Cities*.

d. Legal nonconformities predating the adoption of the zoning ordinance

Legal nonconformities are those uses, structures, or lots that legally existed prior to the creation of a zoning district or adoption of a specific zoning regulation and, in recognition of the landowner’s property rights, are allowed to continue even though they are now inconsistent with zoning code. Besides being allowed to remain in effect, legal nonconformities also escape requirements subsequently enacted, such as setback requirements. The state statute on legal nonconformities supersedes any conflicting language in a zoning ordinance.

While legal nonconformities must be allowed to continue, a zoning ordinance may prohibit them from being expanded, extended, or rebuilt in certain situations. However, nonconformities, including the lawful use or occupation of land or premises existing at the time of an amendment to the zoning ordinance, may be continued through repair, replacement, restoration, maintenance, improvement, but not including expansion, unless one of the following is true:

- The nonconformity or occupancy is not used for a period of more than one year.
- Any nonconforming use is destroyed by fire or other peril to the extent of greater than 50 percent of its market value, and no building permit has been applied for within 180 days of when the property is damaged. In this case a municipality may impose reasonable conditions upon a building permit in order to mitigate any newly created impact on adjacent property.

Nonconforming shoreland lots have additional protections under state law. In addition, cities can regulate nonconforming uses and structures to maintain eligibility in the National Flood Insurance Program. State law specifically authorizes city regulation of nonconforming uses to mitigate potential flood damage or flood flow.

II. Enforcement of zoning and subdivision regulations

Cities may provide for criminal penalties for violation of a land use ordinance.

RELEVANT LINKS:

Minn. Stat. § 462.362.
Minn. Stat. § 169.89.
Minn. Stat. § 609.02, subds.
3, 4. Minn. Stat. §
609.0332. Minn. Stat. §
609.034.

Minn. Stat. § 462.362.

City of Minneapolis v. F and R, Inc. 300 N.W.2d 2 (Minn. 1980). *Rockville Tp. v. Lang*, 387 N.W.2d 200 (Minn. Ct. App. 1986).

State v. Dorn, No. C6-98-2001 (Minn. Ct. App. Mar. 23, 1999) (unpublished decision).

Swanson v. City of Bloomington, 421 N.W.2d 307 (Minn. 1988).
See LMC information memos and materials: *Taking the Mystery Out of Findings of Fact*.

Pelican Lake Prop. Owners Ass'n v. County of Crow Wing, No. C5-98-1549 (Minn. Ct. App. Aug. 17, 1999) (unpublished decision). See LMC information memos, *Zoning Decisions and LMCIT Liability Coverage Guide*, Section III-J *Land Use and special risk Litigation*.

Super-America Group, Inc. v. City of Little Canada, 539 N.W.2d 264 (Minn. Ct. App. 1995).
Trisko v. City of Waite Park, 566 N.W.2d 349 (Minn. Ct. App. 1997).

Cities may designate ordinance violations as misdemeanors or petty misdemeanors. Cities may impose maximum penalties for misdemeanors of a \$1,000 fine or 90 days in jail, or both. In addition, the costs of prosecution may be added. The maximum penalty for a petty misdemeanor is a fine of \$300.

In most cases, cities simply want to obtain compliance with their zoning ordinance and criminal sanctions do not result in compliance. Where the city desires removal of a building or use that violates a zoning or subdivision ordinance, civil remedies may be more effective than even repeated criminal fines. A city may enforce its zoning ordinance through requesting an injunction (a court order requiring someone to stop a particular activity or type of conduct) or other appropriate remedy from the court. These remedies can be used to compel owners to cease and desist illegal uses of their property or even to tear down structures that have been built in violation of the city's land use ordinances.

A land use ordinance may provide that each day the violation exists constitutes a separate offense. Multiple citations are consistent with public policy because it would be unjust to allow individuals to pay the fine for the original charge and finish a building project without abiding by the appropriate codes and ordinances.

III. Making a record and judicial review

To avoid and minimize the costly expenses of litigation related to land use activities and land use applications, cities should keep an accurate record of meetings, including any evidence presented; make findings of fact contemporaneously with any actions taken; and provide an opportunity for interested parties to speak. It is recommended that cities base findings of fact on the record and discuss the legal standards imposed by the city's ordinances.

A city that fails to follow the procedures in its own land use ordinances or fails to document the basis for decisions risks having its decisions reversed by a court.

Councils should avoid deciding a land use issue based on citizen opposition alone. A decision-making body cannot use vague and speculative opinions and unsubstantiated concerns from citizens as the basis for a decision.

RELEVANT LINKS:

Bartheld v. County of Kooching, 716 N.W.2d 406 (Minn. Ct. App. 2006).

Minn. Stat. § 462.361.
Stansell v. City of Northfield, 618 N.W.2d 814 (Minn. Ct. App. 2000).

Sunrise Lake Ass'n v. Chisago County Bd. of Comm'rs, 633 N.W.2d 59 (Minn. Ct. App. 2001).
BECA of Alexandria LLP v. County of Douglas ex rel Bd. of Comm'rs, 607 N.W.2d 459 (Minn. Ct. App. 2000).
In re Livingood, 594 N.W.2d 889 (Minn. 1999).

Hurle v. County of Sherburne, 594 N.W.2d 246, (Minn. Ct. App. 1999).
Minn. Stat. § 15.99. *R.A. Punam & Assocs. v. City of Mendota Heights*, 510 N.W.2d 264 (Minn. Ct. App. 1994). *C.R. Invs., Inc. v. Village of Shoreview*, 304 N.W.2d 320 (Minn. 1981).
Honn v. City of Coon Rapids, 313 N.W.2d 409 (Minn. 1981) (holding limited by *Swanson v. City of Bloomington*, 421 N.W.2d 307 (Minn. 1988)). *Zylka v. City of Crystal*, 283 Minn. 192, 167 N.W.2d 45 (1969).

Kreuz v. St. Louis County Planning & Zoning Comm'n, No. C8-96-150 (Minn. Ct. App. 1996) (unpublished decision).

Minn. Stat. § 462.355, subd. 4.

See LMC information memos, *Zoning Guide for Cities* or *Subdivision Guide for Cities*.

However, expert testimony supporting the citizens' point of view may not be necessary if there is a factual basis for the opposition.

While, district court review of a city's land use decisions is available, a party must first exhaust all remedies provided by ordinance. This would include any possible appeals authorized in ordinance. A person suing to challenge a city's land use decision must allege specific injuries as to how the action adversely affects the person's property rights or personal interests.

When a court reviews a council's land use decision it will look at whether the action was reasonable and rationally based. If the city neglects to state reasons for an action taken on the record, the city's action may be presumed to be arbitrary and unreasonable. Similarly, if the record contains no findings by the council, the burden of proof shifts to the city to show its actions were reasonable.

Denials and findings of fact made within a reasonable time of a decision are sufficient. For example, in complex matters a council may ask the city attorney to draft findings of fact for the council to adopt at a subsequent council meeting when a council denies a land use application. Findings must be legally sufficient and factually supported.

It is of the utmost importance that the city issue denials and adopt findings within the 60-day time limit as required by state law.

When explicit written findings are made—as to the basis and reasons for a decision—the courts respect a city's discretion to make routine municipal decisions and will likely determine the decision is not arbitrary and capricious.

IV. Interim ordinances: Moratorium

Adoption of an interim ordinance (more commonly known as a moratorium) may aid cities in adopting and amending their land use ordinances. A moratorium allows a city to study an issue without the pressure of time generated by pending applications. Cities may use a moratorium to protect the planning process, particularly when formal studies may be needed.

RELEVANT LINKS:

Minn. Stat. § 462.355, subd. 4.

Minn. Stat. § 462.355, subd. 4(d).
Semler Const., Inc. v. City of Hanover, 667 N.W.2d 457 (Minn. Ct. App., 2003).

Woodbury Place Partners v. Woodbury, 492 N.W.2d 258 (Minn. Ct. App. 1993).
Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 535 U.S. 302, 122 S. Ct. 1465 (2002).

Minn. Stat. § 412.211.

See LMC information memo *Purchase and Sale of Real Property*.

Minn. Stat. § 412.211.

Minn. Stat. § 465.035.

Cities must follow the procedures established in state statute to initiate a moratorium, which includes the adoption of an ordinance and conducting a study.

Cities are required to undertake additional steps before adopting an interim ordinance that would restrict, prohibit, or regulate a housing proposal. Prior to adopting an interim ordinance regarding a housing proposal, the city must hold a public hearing. The city must provide written notice three business days prior to the hearing to anyone with a pending housing proposal, anyone who has submitted a housing proposal, or anyone who has requested to receive such notice. The city must also publish the notice on its website if it has one. The hearing must be held prior to the next regular council meeting, or within ten days of the published notices.

An interim ordinance may not delay or prohibit a subdivision that has been given preliminary approval, nor extend the time for action under the 60-day rule with respect to any application filed prior to the effective date of the interim ordinance.

According to the Minnesota Court of Appeals, the use of an interim ordinance prohibiting or limiting use of land is generally not compensable if there is a valid purpose for the interim regulation. In evaluating whether an interim ordinance is a temporary regulatory taking, courts will look to the parcel as whole. There is no bright-line rule for regulatory takings; rather, they must be evaluated on a case-by-case basis.

V. Real estate acquisitions, sales, and other dispositions

Statutory cities are authorized to acquire real property within or outside their corporate limits by purchase, gift, devise, condemnation, lease,

dedication, or otherwise. The law permitting the conveyance of tax-forfeited land to a city may also be used to acquire land.

Statutory cities are free to hold, manage, control, sell, convey, lease, or otherwise dispose of real and personal property as required by the city's interest.

With the council's authorization, no consideration is required when a city conveys land for the public use to another public corporation, any governmental subdivision, or the Minnesota Armory Building Commission.

RELEVANT LINKS:

A.G. Op. 469-A-15 (May 15, 1967).

Minn. Stat. § 462.356, subd. 2.

Minn. Stat. § 412.221, subd. 2.

Minn. Stat. § 462.358, subd. 7. Minn. Stat. § 412.851. LMC information memo, *Vacation of City Streets*.

Minn. Stat. § 412.851.

Minn. Stat. § 462.358, subd. 7.

Minn. Stat. § 412.851. *Petition to Vacate Portions of Streets in Plat of Potstown v. City of Wahkon* No. A04-1233 (Minn. Ct. App. March 29, 2005) (unpublished decision) citing *Bainich v. Harvey* 277 N.W.2d 355 (Minn. 1979).

Minn. Stat. § 164.07, subd. 2.

Generally, a city council can decide to buy or sell property without seeking permission. A city council is not required to submit the question to voters unless bonds are issued to purchase property. If a city has a comprehensive plan, it must usually notify the planning commission of the intent to purchase or sell land and allow 45 days for comment from the planning commission.

A. Vacating easements, streets, and roads

1. Vacation by cities

When it is in the public interest to do so, cities may abandon ownership or control over all or any part of land set aside, dedicated, or used as streets or alleys. State law sets the exclusive process for a statutory city to abandon a street, road, alley, or public way.

In statutory cities, the resolution ordering the vacation must pass by a four-fifths vote of all the members of the council. This means there must be four affirmative votes on a five-member council.

A statutory city may also vacate any publicly-owned utility easement or boulevard reserve in the same way streets or alleys are vacated by the type of city involved.

The steps for a statutory city to vacate a street or alley are as follows:

- The council may initiate the action by resolution, or a majority of property owners who abut the land to be vacated may petition for this action.
- The council must hold a public hearing on the proposal, following two weeks published and posted notice. The city must provide written notice to each affected property owner at least 10 days before the hearing. If the street is within a plat, all property owners within that plat should be considered as affected property owners.
- If the road to be vacated abuts or terminates on, or is adjacent to any public water, the city must send written notice of the petition or resolution to vacate to the commissioner of Natural Resources, by certified mail, 60 days before the date of the public hearing. In addition, the council or its designee must meet with the commissioner of Natural Resources at least 15 days before the public hearing. The commissioner will evaluate the proposed vacation according to state law and will advise the council as to that evaluation.

RELEVANT LINKS:

A.G. Op. 59-A-53 (Jan. 13, 1977).
Minn. Stat. § 160.29.

In re Hull, 163 Minn. 439,
204 N.W. 534 (1925).

Minn. Stat. § 505.14.
In re Verbick, 607 N.W.2d
148 (Minn. Ct. App. 2000).
LMC information memo,
Vacation of City Streets.

See LMC information memo
*Acquisition and Maintenance
of City Streets*.

*Bengtson v. Village of
Marine on St. Croix*, 246
N.W.2d 582 (Minn 1976). *In
re Maintenance of Road
Areas Shown on Plat of
Suburban Estates*, 250
N.W.2d 827 (Minn., 1977).
Minn. Stat. § 161.16 subd.
4(b). A.G. Op. 377-A-4
(August 31, 1959). A.G. Op.
396-G-4 (Sept 10, 1957).
A.G. Op. 377-A-4 (June 17,
1957). A.G. Op. 376-G (July
28, 1955). A.G. Op. 396-G-1
(August 22, 1949).

When a city lawfully vacates a street, the owner of the abutting property holds title to the land in the former street (presumably to the centerline) free of easements either in favor of the public or owners of other property abutting on the street.

Cities may specify the extent to which a proposed vacation affects existing utility easements, including the right to maintain and continue utility easements.

An abutting property owner who suffers “peculiar damages” (lack of access) from the vacation of the street may be entitled to compensation. However, damages likely do not include that a person must travel further or over a poorer road due to a street vacation.

2. Vacation by courts

For streets in private and in certain platted territories, there is also a district court procedure for vacation. A street may be vacated only if it is useless for its original purpose.

The courts broadly construe the terms “useless” and “purpose.” Merely showing the street is not presently used is insufficient to show uselessness. Before a court may grant an application, the mayor of a city must receive personal notification of the application at least 10 days before the court intends to hear the application. If the road to be vacated abuts or terminates on, or is adjacent to any public water, the commissioner of Natural Resources must be notified well in advance and has a right to intervene in the court proceedings.

B. Establishing streets, roads, and cartways

1. City streets and roads

The decision to acquire, construct, and open a city street is vested solely with the city council.

With the exception cartways for inaccessible properties discussed below, in statutory cities there is no method, via petition or otherwise, by which a citizen or group of citizens can directly compel a city to acquire or construct a street. However, the Commissioner of the Minnesota Department of Transportation may convey to a city all or part of the right-of-way of an existing road that is no longer a part of the trunk highway.

RELEVANT LINKS:

A.G. Op. 396-G-7, (June 19, 1946). *J&W Asphalt, Inc. v. Belle Plaine Township*, 883 N.W.2d 827 (Minn. Ct. App. 2016).

See LMC information memo, *Acquisition and Maintenance of City Streets*.

Minn. Stat. § 435.37. Minn. Stat. § 164.07.

Minn. Stat. § 465.01.
Minn. Stat. § 117.012.

A Minnesota Court of Appeals decision determined that no resolution by a local government accepting a conveyance from the commissioner was necessary for the conveyance to be effective.

The decision to acquire or construct a street is a city council legislative decision. This means that as long as a city’s reasoning to construct a street is neither arbitrary, capricious, nor based upon an erroneous reading of the law, the courts will not overrule a city’s decision. The city alone may choose the best time to open, occupy, and use city streets.

Mere notation of a street on an accepted and recorded plat will not require the city to open and maintain street. Instead, the plat simply reserves the dedicated land for future use.

Cities may acquire land for streets in a variety of ways including outright purchase through negotiation, dedication (on a plat or otherwise), eminent domain, and other statutory processes.

2. Cartways

Cities must establish a road where a property owner has limited access to their land (otherwise known as being landlocked). A property owner who has limited access to their land may petition the city council to connect the land to a public road. If the petition fits the following criteria, the city council must establish a cartway (a road or driveway) connecting the petitioner’s land to a public road:

- The tract of land is five acres or more.
- The owner has no access except over a navigable waterway or over the land of others.
- The current access is less than two rods (33 feet) in width.

A city council may select an alternative route to the one proposed by the cartway applicant if it deems the alternative is less disruptive and damaging to the affected landowners and in the public’s best interest. Generally, the petitioner must pay all costs associated with establishing and maintaining the cartway, including paying any “damages” to adjacent landowners whose property will be used for the new cartway.

C. Eminent domain

1. Background

All cities have the authority to take (or condemn) private property for public use as long as they pay the landowner reasonable compensation.

RELEVANT LINKS:

Minn. Stat. ch. 117.

Essentially, this is a way to require that an owner sell land to a city and used in a way that is a benefit to the public. This procedure requires a formal court action, and a city must pay an owner for the value of the land or the damages to the land – if the city is taking only part of the private property, such as for an easement.

Minn. Stat. ch. 117.

a. Public use and public purpose

Cities may only use their power of eminent domain in a manner consistent with state law. The law preempts all other condemnation procedures for charter and statutory cities (except for drainage, town roads and watershed districts). It narrows the definition of “public use” and “public purpose” to:

- The possession, occupation, ownership, and enjoyment of the land by the general public, or by public agencies.
- The creation or functioning of a public service corporation (for example, a municipal or private utility).
- The mitigation of a blighted area, remediation of an environmentally contaminated area, reduction of abandoned property, or removal of public nuisances.

The public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health, do not by themselves constitute a public use or public purpose.

Minn. Stat. § 117.025, subd. 6.

Cities may use condemnation to alleviate a blighted area; however, “blighted area” narrowly defined as an area in urban use where half of the buildings are structurally substandard.

Minn. Stat. § 117.025, subd. 7.

To be considered “structurally substandard,” a building must meet the following criteria:

- The building has been inspected and cited for enforceable housing, maintenance, or building code violations.
- The building code violations involve specific structural aspects of the building (e.g., roof, support walls and beams, foundation, internal utilities).
- The cited violations have not been remedied after two notices to cure noncompliance.
- The cost to cure the violations is more than 50 percent of the estimated market value for the building (excluding land value).

The law gives local government the authority to seek an administrative search warrant to enter and inspect a building if there is a reasonable suspicion that the following are true:

RELEVANT LINKS:

Minn. Stat. § 117.027, subds. 1, 2.

- The property violates a specific section of a housing maintenance or building code.
- The violation is ongoing.
- The owner denies the local government access to the property.
- Cities may use recent fire or police inspections, housing inspections, and exterior indications of deterioration as evidence to support their suspicions that a building is structurally substandard.

The law prohibits taking non-structurally substandard buildings and uncontaminated parcels unless there is no other reasonable way to remedy blight or contamination in the area—and all possible steps are taken to minimize the taking of such buildings or lands.

Minn. Stat. § 117.025.

The law also specifically defines other terms (owner, environmentally contaminated areas, abandoned property and public nuisance). Additional resources are available on these legal terms as well as the legal standards a city must meet when condemning private property.

Minn. Stat. § 117.041, subd. 3.

To establish findings related to blight and contamination, a city may need to conduct geotechnical investigation. State statute permits a city to enter private property prior to commencing eminent domain proceedings to investigate, survey, and test the site and subsurface conditions. Prior to this entry, the city must provide the landowner at least 10 days advance notice. If the landowner refuses entry, the city must obtain a court order to enter the property.

b. Procedure

All land acquisitions must follow the process the state uses to take land for transportation purposes and requires:

- The exchange of appraisals.
- The timely exchange of specific documents between the parties.

Minn. Stat. § 117.0412.

The law includes a requirement for a public hearing before a city can condemn property to mitigate a blighted area, remediate an environmentally contaminated area, reduce abandoned property, or remove a public nuisance. In concert with the hearing requirements are notice requirements. The law requires that cities make specific findings as to public costs, if any, and public purposes during the process.

Minn. Stat. § 117.226.

If a city determines that property acquired through eminent domain is no longer needed for a public purpose, the city must offer to sell the property back to the person it was acquired from at the original price or the current fair market value, whichever is lowest. (The Minnesota Department of Transportation is exempt from this “right of first refusal” requirement).

RELEVANT LINKS:

In re Wren, 699 N.W.2d 758 (Minn. 2005) distinguished by *Instant Testing Co. v. Community Security Bank*, 715 N.W.2d 124 (Minn. Ct. App. 2006).

42 U.S.C.A. §§ 4601-4655.

Minn. Stat. § 117.52, subd. 1(a).

Minn. Stat. § 117.52, subd. 4.

Minn. Stat. § 117.031.

Minn. Stat. § 117.186.

c. Relocation costs

Both state and federal law protect property owners and tenants who are required to move because of eminent domain proceedings; cities, or condemning authorities, must pay relocation costs for the people who must move. In some limited circumstances, owner-occupants may waive relocation benefits.

If a city receives federal funding for a project that involves the use of eminent domain, federal law requires that the city pay certain benefits to people who must move from their homes, farms, or businesses because of the project.

Minnesota law also requires payment of relocation benefits when eminent domain is used, even if no federal funding is involved. The nature and amount of these benefits is the same as if federal funds were involved. The maximum that a city must pay to a relocated business is \$50,000 of eligible expenses.

If a person must relocate but does not accept a city's determination of the amount of relocation assistance or a city's denial of relocation assistance eligibility, state law requires that a city seek resolution using state contested case procedures and an administrative law judge.

d. Court and compensation costs

If a person challenges a city's condemnation proceeding or amount in court, and prevails, the court may – and in some situations must – award the person's court costs and attorney fees. State law contains numerous provisions relating to compensation for losses, including but not limited to:

- Going concern compensation.
- Minimum compensation.
- Acceptance of replacement properties.
- Loss of a nonconforming use.
- Loss of driveway access.

The use of eminent domain is controversial and complex. A city council considering the use of eminent domain should consult with the city attorney well before using this tool for land acquisition.

RELEVANT LINKS:

U. S. Const. Amend. V.
Minn. Const. art. I § 13.

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886 (1992).

Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 112 S. Ct. 2886 (1992).

Penn Cent. Transp. Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646 (1978).
Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007).

McShane v. City of Faribault, 292 N.W.2d 253 (Minn. 1980).
DeCook v. Rochester Intl. Airport Joint Zoning Board, 796 N.W.2d 299 (Minn. 2011).

Olsen v. City of Ironton, CX-00-1371 (Minn. Ct. App. Apr. 17, 2001) (unpublished decision).

Alevizos v. Metropolitan Airports Comm'n, 298 Minn. 471, 216 N.W.2d 651 (1974).
Grossman Invs. v. State by Humphrey, 571 N.W.2d 47 (Minn. Ct. App. 1997).
Minnesota Sands, LLC v. County of Winona, 940 N.W.2d 183 (Minn. 2020).
Minn. Stat. ch. 117.

Northern States Power Co. v. Minnesota Metro. Council, 684 N.W.2d 485 (Minn. 2004).
Johnson v. City of Minneapolis, 667 N.W.2d 109 (Minn. 2003).
See Part V of this chapter for more on *eminent domain*.

VI. The “takings” issue

A. The general law

Both the U.S. Constitution and the Minnesota Constitution forbid the taking of private property for public use without just compensation. Traditional “takings” prevent the government from physically occupying private property without just compensation. The U.S. Supreme Court has also ruled that government regulation (without physical occupation) of a property may, in some circumstances, also give rise to a “takings” claim. Zoning and land use regulations may be considered takings if the regulations go too far. In determining whether a regulation violates a property owner’s rights, the United States Supreme Court has recognized two distinct classes of regulatory takings:

- Categorical takings, in which the regulation denies all economically beneficial or productive use of land.
- Case-specific regulatory takings, which involve consideration of the economic impact of the regulation, the interference with reasonable investment-backed expectations, and the character of the regulation.

The Minnesota Supreme Court has recognized a third class of takings that may occur when the government adopts a land use regulation designed to benefit a specific public or governmental enterprise.

If the regulation is enacted for the benefit of a government enterprise (airport zoning, for example), the government must compensate the landowners whose property has suffered a substantial and measurable decline in market value.

When the government takes property without formally using its eminent domain powers, the property owner has a cause of action for inverse condemnation under the eminent domain laws. Those with less than ownership, such as lessees, may have claims as well, as long as the interest is not contingent or speculative.

Inverse condemnation is an action against a governmental defendant to recover the value of property that has been taken in fact by the government defendant, even though no formal exercise of the statutory power of eminent domain has been attempted by the taking agency.

RELEVANT LINKS:

42 U.S.C. § 1983.

Knick v. Township of Scott,
139 S. Ct. 2162 (2019).

*Nordmarken v. City of
Richfield*, 641 N.W.2d 343
(Minn. Ct. App. 2002).

Handbook, *The Home Rule
Charter City*.

Money damages may also be available under a claim that the taking violates a person’s constitutional rights.

A property owner with a takings clause claim may proceed directly to federal court without first attempting to obtain just compensation available in state courts.

VII. How this chapter applies to home rule charter cities

The Municipal Planning Act and the Metropolitan Land Planning Act occupy the field of the process by which municipal land use laws are finally approved or disapproved, and preempt the power of referendum reserved in a city’s home rule charter. For the most part, Minnesota land use law governs home rule charter cities just as it does statutory cities. Some charters contain provisions for the acquisition and disposition of real property as well as the opening and vacation of city streets.

As a result, best practice suggests charter cities seek legal advice as to real property transactions and street opening and vacation.