WEST ST. PAUL PLANNING COMMISSION
CITY ATTORNEY WORK SESSION
July 20, 2020

The Planning Commission City Attorney Work Session was called to order by Chair Samantha Green, on Monday, July 20, 2020 at 6:30 pm in the Municipal Center Council Chambers, 1616 Humboldt Avenue, West St. Paul, Minnesota 55118.

ROLL CALL: Samantha Green, Dan McPhillips, Lisa Stevens, Morgan Kavanaugh, Tori Elsmore, Peter Strohmeier, Maria Franzmeier

Also Present: Melissa Sonnek, City Planner; Kori Land, Attorney; John Justen, City Council Liaison

Land presented to the Commission. She has trained everyone one-on-one with the exception of Elsmore. Hopefully, there will be some new material in tonight's training. Land has been the city attorney about 2003-2004. She was partnered with the former city attorney at Levander Gillen, and replaced him once he retired. She is in love with municipal law and the Planning Commission is one of her favorite assignments.

Land began saying this training will help the commission to refocus and give them tools and guidance on what needs attention, what is important, and what their role is. The power point presentation would cover: Agenda statutes on the Planning Commission, open meeting law, public hearings, what can be done in meetings/process/Robert's rules and planning applications. Land shared Minnesota Statute 462.351, the Municipal Planning and Development; Policy Statement. The legislature recognized the need for a rule book to follow for development. The Planning Commission may be provided with staff; the Commission is advisory body to City Council. Council makes the final decisions. Most of the Planning Commission's work is in creating and developing the Comp Plan, drafting the comp plan and drafting subdivision ordinance and the zoning ordinance. The secondary work is the subdivision and conditional use permits. Staff takes care of plan review and building permits. The Planning Commission must follow the Rule Books: the Comprehensive Plan, the Zoning Ordinance and the Subdivision Ordinance. Every city has to develop a Comp Plan every ten years; it is the future guide for development. The Commission develops and drafts the plan. It will set the stage for all of the other rules. The Zoning Ordinance is developed after the Comp Plan. Many things are regulated through the zoning ordinances, i.e. number of stories for buildings, building size, density of population etc. Areas of the municipality are divided into zoning districts. The Land Use Map (Comp Plan) is defined by "broad brush strokes" of color, the Zoning Map is broken down further into zoning districts. The subdivision regulations apply to plats. If a plat is being divided into parcels, the commission can use the subdivision regulations to define the "nitty, gritty details" like curbing, mailboxes, drainpipes, lot sizes, park dedication fees.

Land asked "What is a plat?" Land showed the example of the Crowley Circle development. One of the properties was unplatted. It only has a "meets and bounds" description. A plat has a lot and a block. It's an easy "legal." A plat has the utility easements on it. It has all of the streets on it. It has all of the rights of way, all the wetlands; everything is in the plat. A plat may come before the commission. It should be delineated. It should have all the necessary things incorporated into it for it to be platted. McPhillips asked about the unplatted Crowley Circle property; it had a house on it. Land explained that because this property was not part of the purchase of the Crowley Circle development, it was not platted. The City did, however, try to get the property included in the subdivision regulations. The property can remain unplatted until the owner wishes to sell or until the owner decides to do something to the property which would necessitate the need to plat. Kavanaugh asked about the Land Use Map.

He asked if the Commission would "run around town" and update the Zoning Map, or would they slowly bring the Zoning Map in line with the Land Use Map as applications come in? Land said it was an interesting question. It is critical that the Land Use Map and the Zoning Map are in sync. There is a requirement in State Law, that the Municipality bring the Zoning Map into compliance with the Land Use Map within 6-month time frame. However, this rarely happens; usually cities wait for applications to make the changes. There is case law that states you have to bring it into synch. Otherwise the rules may [contradict.] A developer can say they can go either way. Kavanaugh asked if the Land Use Map trumps the Zoning Map. Land answered that the law says that is true. Zoning ordinance plays catch-up with the Land Use Map. It is the long-term guide. Green asked about the process of making the maps consistent. The process would be through a Zoning Map amendment, (requiring an ordinance) or a Comp Plan amendment which would also be a public hearing process, (which would not require an ordinance.) The Comp Plan amendment would need Met Council approval. Most of the time, the "synching" happens at the time of application. The City may have a problem, however, if the developer was not on the same page as the City or Council. Franzmeier asked why does the Planning Commission reviews plats. Land answered that a plat is a "creature of statute," and by statute, the Planning Commission has to review and recommend to Council to approve a plat. Land added that the Commission cares about land use and the Commission cares about everything that touches the land. Franzmeier commented that reviewing a plat before the site plan review is sometimes confusing. It seems like the chicken before the egg. It seems very technical and should be left to Staff. Land said that the Commission does not always have the luxury; it depends on the developer's needs as well. They may need to have the plat recorded first. City staff has vetted every issue before the Commission sees the plat. Staff work out the details; there is nothing for the Commission to do. It still, however, must come to the Commission for a recommendation; it is an obligation by statute.

Land said that Open Meeting Law is unfortunately, very vague. It just states that all meetings are open to the public. The meetings that are open to the public are: City Council Meetings and Work Sessions, EDA, Parks and Recreation Committee, Environmental Committee, Charter Commission and the Planning Commission. A meeting is defined in old case law. It is a quorum of the body. It discusses decides or receives information as a group and information related to official business. This is the "three-prong test. " Land urged asked commissioners to avoid outside the room meetings such as email and social media. Land referenced the Open Meeting Law violation, "IPAD Decision." The violation happened quickly with a "reply all" email exchange. Email should be used only to receive information from the City or between two members of the public body without forwarding or copying other members of the public body. Land gave other examples of Open Meeting Law violations: being friends on Facebook with a quorum of commissioners, being followed on Twitter by a quorum of commissioners, etc. However, Commissioners may talk about historical events. The Sunshine Law is made to avoid backroom meetings. Justen added that emails that are chained to more than 4 members (a serial meeting) are an open meeting violation. The penalty for this is not worth the public embarrassment and the consequences to the City's reputation. Land asked Commissioners to be mindful of not having a quorum outside of official business.

Land said that the Planning Commission serves the City. Commissioners need to do what s in the best interest of the City. They have a duty to uphold the documents and rules put in place for the City's vision. The Comp Plan is not just a map; it has to be applied and interpreted in different places; to ensure a safer, more pleasant more economical environment for resident, commercial and industrial and public activities. Land went on further to say, "There are no politics in planning." The Commission should apply the rules and the rules are in black and white. Due process has to be protected in all of the City's Public Hearings. What kinds of things require Public Hearings? Many things like variances, CUP's,

interim use permits, etc. Public hearings are important because they give notice to everyone that has an interest in an application and because public hearings are made part of the official record. Reviewing courts will look at the record, the minutes, and even the taped video of meetings. The courts will look at these things to see if the rules were followed or not. At a public hearing, the commissioners are required to make a decision upon the findings of fact. Usually staff provides the information but commissioners can ask for more information if they have more questions. Kavanaugh asked Land what should be done if there is a disagreement on a Finding of Fact. Land responded that where there is a difference of opinion on a finding of fact, [the chair] would separate the finding of fact to see if the majority agrees for the resolution. It would probably be the fairest way to decide. The finding of fact can be voted on separately. The Commission would vote on the element first and then vote on the entire resolution. Land talked about Hoyt vs. City of Minneapolis and the developer's right to due process. Land said the commissioners must be open to the evidence presented in the public hearing and not decide how they will vote before the meeting. Commissioners must remain impartial. Green asked if they could share their opinions with Council members. Land responded that after the public hearing is closed, commissioners can voice their opinions, not before. Land referenced Franzmeier's question of "Why bother having an opinion?" Land said commissioners can exercise their First Amendment rights after the public hearing. Commissioners can speak about the "the bricks and mortar" application and apply the rules during the public hearing. Things like setbacks are relevant and applicable. Social issues and personal opinions outside the rule book should not come out during the public hearing. Stevens asked Staff could handle this [type of review]. Land said that staff gives you their opinion and direction; statute says there has to be the Commissioners and this body. The Commission is there to check rules are being followed; there may be a special condition that needs to be evaluated by the Commission. The commissioners know their community and neighborhood; "you want to protect them as best as you can." Stevens said it sounds like an opinion. Land said that it is an opinion that is applied to "dirt and land use," not to social or political opinions. Kavanaugh asked there are times when the commissioners disagree with staff. They are situations in which they are called to interpret a use for something that is not specifically outlined in the code. Land said that variances are one of the most important times for the commissioners to state their opinion. For example, the Bingo Palace's application for a variance on parking. The neighborhood came out in force saying there was no way the city could allow the variance. They said there was not enough parking and the cars would overflow on to their neighborhood. That is where the commissioners weigh in with their common sense and with the information that they have received. This would not be in the four corners of the rule book. Kavanaugh brought up an example of Raising Cane's. You cannot base your opinion on whether or not you like the establishment or not. You would not be applying the rules. Land agreed and elaborated saying the rules do not say anything about chicken places and having too many of them.

Franzmeier remarked that a lot of ordinances are not reviewed prior to an application. As the Commission approves application, there are things that she wishes were written differently. At the time of application, the developers have done their site plans to code. She asked, "Is it too late to change anything?" Land said it is a great question. Once the application is in cue, it is too late to change the rule book on them. The Commission cannot change rules on developers, because that violates their due process. Moving forward, the Commission can look at changing the rule. Green said that Sonnek has a running list of things to review. Green asked what the procedure was to examine these items. Land said the list can be refreshed and updated or changed and then prioritized. The Commission should focus on the top three [priorities.] The commission can ask for staff to set up the work session. Regarding site visits, Land said that the commissioners could do site visits. Land, however, does not recommend site visits. Commissioners should be getting all their evidence at the same time at the Public Hearing. If a

site visit is done, Commissioners should go by themselves or in groups of two. The best practice is to go and not to speak to anyone during your visit. Commissioners may speak to staff. They should not stump the Planner at a meeting; they should prepare staff before the meeting. Justen asked what they should do if they have a question for the applicant. Land said that they should contact the City Planner and the applicant could answer the question during the Public Hearing. People will call the Commissioners with their opinions. Do not hang up on therm. The best thing to do is to listen and urge people to come to the meeting. They must provide the information in person. Otherwise it is hearsay. Residents can also submit their information in writing as well.

Land talked about valid Findings of Fact. This is in the rule book. They are consistent with the Comprehensive Plan, do not endanger, injure or impact the surrounding properties and meet the definition of practical difficulties.

Examples of what is not a valid finding of fact are:

- It's better than what is there now.
- It's a free country.
- The owner can't sell the property the way it is zoned now.
- The building materials are too expensive.

Valid findings of fact to deny an application include:

- Not being consistent with the Comp Plan
- If the application will impede the development surrounding properties
- The application does not meet practical difficulties.

Not valid findings of fact include NIMBY, Not in My Backyard, dislike of business, or having a business of this type already. Another not valid finding of fact is "not the highest or best use of the property". If it meets the conditions, the Commission has to allow it. Green asked if contractor costs can be a factor in the recommendations that are made. Land said that this usually happens when the contractor is seeking a variance in building materials, or they need more lot coverage. It does not matter. Cost is not the Commission's problem; they need to ensure a good development. Kavanaugh asked if the Commission establishes reasonable conditions of approval, but if the additional conditions are overly costly, could it go to the fact that they are unreasonable? Land replied that the Commission cannot make a developer do more than what the code requires. For example, if the developer is making a building with brick and a little bit of glass, the Commission cannot require them to have windows on all sides. The developer cannot be forced to go above and beyond the code. The specifics can be put in recommendations. McPhillips asked about the building material percentages. Sonnek said there has to be 60 percent primary materials, brick, stone and stucco. For commercial buildings, there has to be 40 percent glass coverage. It is very specific.

Land said when the commission is approaching something unfamiliar, like solar panels, they should act conservatively. The commission should allow maybe one solar panel on a building. She advised, "Do not open the floodgates"; the City could end up with things it did not envision. Ordinances are intentionally written in a conservative tone. Land advised the commission to be thoughtful in the beginning and very deliberate in drafting ordinances, and to give time for the ordinances to work. Land related that Robert Street, was used in textbooks as an example of bad planning. There were too many pylon signs and too much visual clutter. There were no rules or regulations. In 2000, City Council adopted the Renaissance Plan. The plan called for reducing setbacks, lowering the pylon signs, increasing landscaping in parking lots, etc. The City adopted zoning regulations in 2000. Land showed

before and after photos of Robert Street changes in the landscape with added greenery and reduced setbacks for businesses. Pylon signs have been reduced as well; not all businesses get their own sign. The "monument" signs have replaced the pylons.

Land showed the commission the official Roberts Rules of Order.

Land talked about possible problems that can occur during discussion:

Getting "**Caught in the Weeds,**" and bogged down by specific details and not the big picture - If the applicant meets code, the Commission cannot make them exceed it. It is outside their scope. They can only put reasonable conditions on the applicant.

Focusing on matters outside the scope of the Commission's scope and authority - The Commissioners' only concern is the "brick and mortar,"- the exterior of the building and not the interior of the building or its business practices or ideology. Green asked if somebody were looking for a use that the commission does not think fits; they would need to talk about business practices. Land said it depended on what the use is, if it were a residential use or an office use. Under each zoning district there are a list of uses. Planning staff figures out which use it is. Stevens said staff often takes the closest thing and sometimes it is really different, like a storage facility fitting into a warehouse use. Land said this was an interpretation question. If the applicant disagrees with an interpretation, they can always appeal it. If the use is not on the list, you cannot do it in the City.

Sometimes you want more information that what is available. Land talked about looking up information on the internet during a meeting. It is a very bad idea. Information on the internet is not always reliable and misinterpreted. Land said that commissioners should not do "math at the table." They should ask staff to recalculate. If more information is needed, staff can get the information and continue the hearing. If there is no time, (60- day rule), a recommendation for more information can be made to Council.

Sometimes healthy discussion results in disagreements.-Land says to remain respectful and know when "you've made your point," and move on for the vote to be taken. Ultimately the Chair controls the discussion. The Chair can decide if the discussion has gone outside the scope of the commission, and call for a motion when the issues become belabored.

Land talked about permitted uses. There are uses under every zoning district. There are permitted uses, conditional and interim uses and sometimes prohibited uses. With a permitted use, the use has already been decided for the building. The Commission will never see an application for a permitted use because it has already been determined. A Conditional Use Permit is basically a permitted use. However, because of where it is located, it needs "some love and care." There may be some surrounding uses, or a traffic issue or neighborhood that might need some protection or conditions. Kavanaugh asked for a reason to deny a CUP. Land gave a hypothetical example of a mixed use permit in a residential/commercial area. If the property were in a cul-de-sac and traffic would be horrendous, that would be an instance to deny a CUP. Stevens said that traffic comes up a lot and the traffic studies are almost useless. Land said it was up to the commissioners to use their judgement for this issue. Once a CUP is granted, it runs with the land. It is recorded with the property and not with the owner. The Commission can add reasonable conditions that are tied to the use of the property. It is not the same as a legal non-conforming use. They can replace, they can improve but they cannot expand. A legal non-conformity will eventually go away. A CUP will not unless it is revoked. For example, Council revoked a CUP for an auto sales lot in the middle of a residential neighborhood with very narrow streets. The condition was that customers could not park on residential streets. The customer and the excess

inventory for the store spilled out into the neighborhood. Land advised the commissioners to think about Conditional Use Permits being on the property for life. They can be. Interim uses are a temporary use of land which you can attach reasonable conditions. They are fantastic because they do end; they are date certain or event certain. The Commission can say when that use stops. Examples of interim uses are seasonal uses: garden centers, mining activities, storage uses with temp structures.

One of the most common applications the commission sees are variances. A variance is a permission to break the rules. The standard test is practical difficulties. The commission does not have to grant a variance automatically. Variances may be granted when there are practical difficulties. However the Commission is not required to grant the variance even if there are practical difficulties. There are rules for a reason and that is reason enough to deny a variance.

If you a variance is granted, the applicant has to meet the test:

- The property must be used in a reasonable manner.
- There are circumstances unique to the property that were not caused by the landowner.
- The variance will not alter the essential character of the locality, (neighborhood.)

What is a reasonable manner? The commissioner has to ask if the use would be reasonable or "crazy." What are unique circumstances? It usually has to do with some physical issue with the property. It could be an odd shaped lot. There could be a giant oak in the middle of the property. They could have an alley or not have an alley. For some reason, it makes the property special. This is the only instance when the commissioners take into consideration cost. However, economic considerations alone are not sufficient for the variance. Land added that the unique circumstances cannot be created by the landowner. A landowner cannot build an oversize garage because he "has too many toys." That is the landowner's problem. Kavanaugh asked if it were the logical conclusion that the landowner created the situation. Land said there are circumstances that are truly unique to the property. She put forth an example of a landowner not being able to build a garage because of the shape of their property. It would still be reasonable to want a garage. They would like to build but cannot because of the configuration of their property. Land could argue that it is reasonable to want a two-car garage. Sometimes the variance is a need; sometimes it is a want. The commission gets to evaluate if the need were created or not. Land asked would the landowner create the circumstance if they bought the property knowing they would need a variance. Was the variance self-caused? The answer is no. They did not create it. They bought it as a risk. The commission can still say no. Land feels that most variances should be denied. She did cite one example in South St. Paul where a variance was justified. In South St. Paul, all the properties that were developed in the fifties were built with a detached garage in the front of the house. On one of the properties, the garage burnt down. The property owner chose not to rebuild the garage. Building code changed and garages were placed the back of the properties. The new owner chose to build a new garage but did not want to build it in the back of the property. The variance was granted because the rest of the neighborhood still had front yard garage. A backyard garage would have actually looked odd.

Land talked about the case study for Leeann Chin's pylon sign on Robert Street. The sign would use the same spot and foundation as the former business but would be higher than code allowed at 15 feet, (5 foot variance.) The applicant's argument was the limited visibility of the restaurant and the restaurant industry reliance on the impulse decision making by hungry people driving past. Then the 5-8 Club came a year later. They wanted a variance (pylon sign at 17 feet) for the same reasons and because of the LeeAnn Chin sign. LeAnn Chin's variance was not granted and the 5-8 Club variance was granted. The statute of limitations expired, and LeeAnn Chin did not sue the City. Land said this is an example of two

applications a year apart, same people at the table with two completely different results. This is not ideal. The commission needs to apply the rule books and to apply them in the same way.

What is a Zoning Ordinance Amendment? There are two different kinds: a map amendment and a text amendment. The burden for a map amendment is on the applicant rather than on government to change zoning. They have to show that it fits with the Comp Plan. Map amendments cannot allow "spot" (small islands of non-conforming use) zoning. In order to rezone from Residential to Commercial or Industrial; there needs to be a Supermajority vote (2/3) by council. A Text Amendment cannot change the zoning rule ad hoc. Commissioners should consider where the changes would occur elsewhere in the city.

When the Comp Plan and the Zoning are in conflict, the Comp Plan wins. Mendota Golf is the case study. Mendota Golf was a nine hole, 3 par privately-owned golf course. The Comp Plan guided it as a golf course. The zoning ordinance zoned it as Single Family Residential. A developer was willing to buy it and convert it to single family residential lots and sell it for a gazillion dollars. It required a Comp Plan Amendment. City Council voted no; they wanted it to remain a golf course. If the comprehensive municipal plan is in conflict with the zoning ordinance, the zoning ordinance shall be brought into conformance with the plan. The other option would be to Comp Plan amendment.

Land explained the 60-Day rule; failure to act on the application within 60 days results in automatic approval. Extensions can be granted for valid reasons. The applicant may request an extension as well. The 60 –day rule for the planning applications is state-wide. It starts when the application is deemed complete. It usually the date of submission but the City Planner can send the application back if she deems the application is not complete. Franzmeier asked if a traffic study were requested, would it extend the 60 days. Land said the commission could ask for the extension if the traffic study was a reasonable request.

Land talked about Conflicts of Interest as an appointed body or as an elected official. Commissioners cannot have a direct or indirect personal or financial interest in any matter upon which they will make a decision. The only time this may affect a commissioner is when your neighbor is applying for a variance or the commissioner personally needs a variance. Green asked if there would be a conflict of interest if a deal were being brokered by an agent in her brokerage and she had no knowledge of the deal. Land said, "Step away from the edge." If their company were involved and even if a commissioner would not gain monetarily, she would recommend that they not participate in the vote at all. It is safest. If a commissioner has a conflict, they should disclose it and not participate in the discussion or the vote.

Regarding Gift Law; City Officials cannot accept any gifts from anyone. This includes money, personal property, real property, service loan or forgiveness of debt. Nothing over $5 in value can be given. An example would be black coffee in a small cup. Because City Officials took advantage of developers years ago, this very narrow law was enacted.

In closing Land said, "You want to do the right thing." Please apply the rules. She said that she will not be able to attend the Planning Commission Meetings because of a scheduling conflict. She will have someone [from Levander Gillen] present for the meetings.

The meeting was adjourned at 8:43 pm.
All Ayes.

Respectfully submitted,
Sharon G. Hatfield