



Planning and Zoning
Commissioner Training

101



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North Dakota Planning Association

strives to provide planners, commissioners, and interested citizens of North Dakota an exchange of ideas and opportunity to learn more about planning in the state and region.

Membership information can be found at:
<https://www.ndplanning.org/memberships>

Your membership is what allows us to provide trainings such as this and to advocate for Planning goals throughout the state.



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Presenters are not attorneys. Please always consult with your legal counsel.



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Agenda

2 hours: Presentation

30+ minutes: Questions

- Introduction to Planning
- Dynamics , Tools, Procedures
- Considerations for decision-making
- The Comprehensive and Other Plans and Decision-making
- Conditions of Approval
- Open Meeting Laws & Ethics
- Common Terminology (Mixed Use, Non Conforming, Extra Territorial Jurisdiction)
- General Questions
- North Dakota Planning and Zoning Guidebook
- Future Education Opportunities Discussion



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What is Planning?



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What is Planning?

Start

Where are we now?



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What is Planning?

Start

Where do we
want to go?

Finish

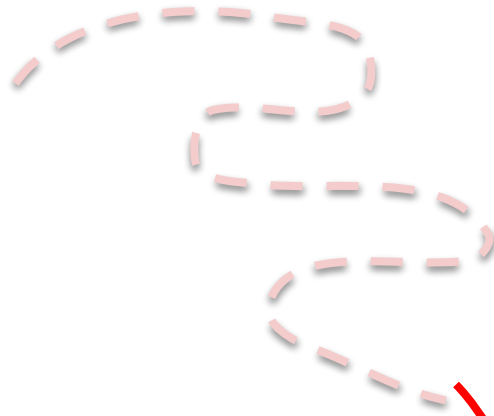


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What is Planning?

Start

How do we get there?



Finish



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The Comprehensive Plan

The comprehensive plan answers these questions as they relate to a community and...

- Address topics such as:
 - Land use patterns
 - Housing stock
 - Transportation & other infrastructure (water,
 - Health
 - Emergency Services
 - Economic Development
 - Natural and cultural resources/amenities
 - And many other considerations...
- Include goals, objectives, and policies that staff and decision-makers utilize to guide recommendations and decisions.
- Provide a roadmap to adapt to changing conditions



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Why Should We Plan?

- Strong communities are created purposefully
 - Low taxes, recreational amenities, housing options, and relatively low commute times, for example, do not occur without concerted effort
- Planning helps to enhance quality of life for residents/workers
- Ensure decisions made today take into account the effect on

*** Good plans are heavily reliant on community input and are a of residents and workers in a community.



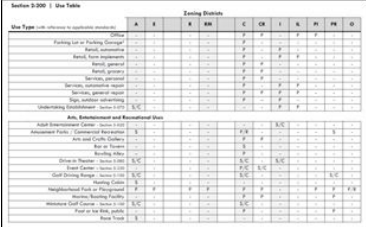

Legal Basis for Planning

Development patterns and land uses DO have an effect on the overall health and well-being of the community

- Jurisdictions have the legal right (and *responsibility*) to regulate land uses, and to make and enforce plans and policies to guide development
 - Enabling legislation in ND Century Code for Cities, Counties and Townships
 - 5th and 14th Amendments of the U.S. Constitution
- Concept of infallible land-owner rights is not 100% accurate
 - The practice of land ownership and the creation of property boundaries is made possible by the police power of the state
- Court cases provide guidance and refine the line between landowner rights and a jurisdiction's ability to regulate land uses and development



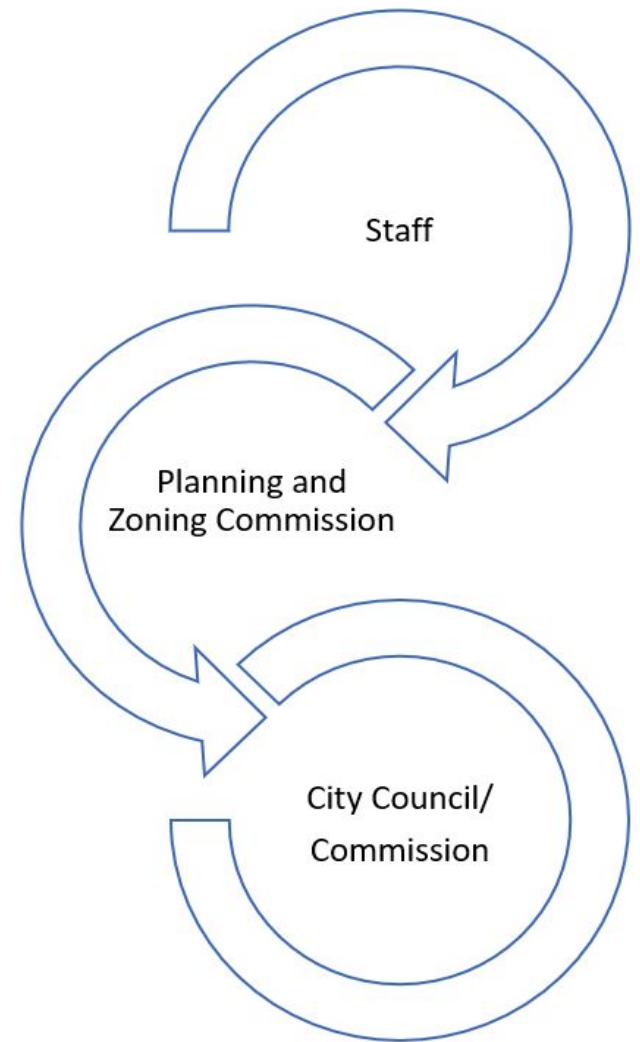
The Comprehensive Plan vs. Zoning Code

<h2 style="text-align: center;">Zoning Code</h2> 	<p>Legal Document</p>	<p>Regulation</p>	<p>Black & white answers</p>	<p>Rules that apply in the current moment, with rights attached to property “now” (aka entitlements)</p>	<p><u>Should</u> support goals in the Comprehensive Plan through its day-to-day application</p>
<h2 style="text-align: center;">Comprehensive Plan</h2> 	<p>Legal Document</p>	<p>Policy</p>	<p>Decision-making guide. Used as <u>basis for approval/denial</u> of applications</p>	<p>Applies to upcoming/future development</p>	<p><u>If followed</u>, should direct City efforts toward achieving community goals</p>



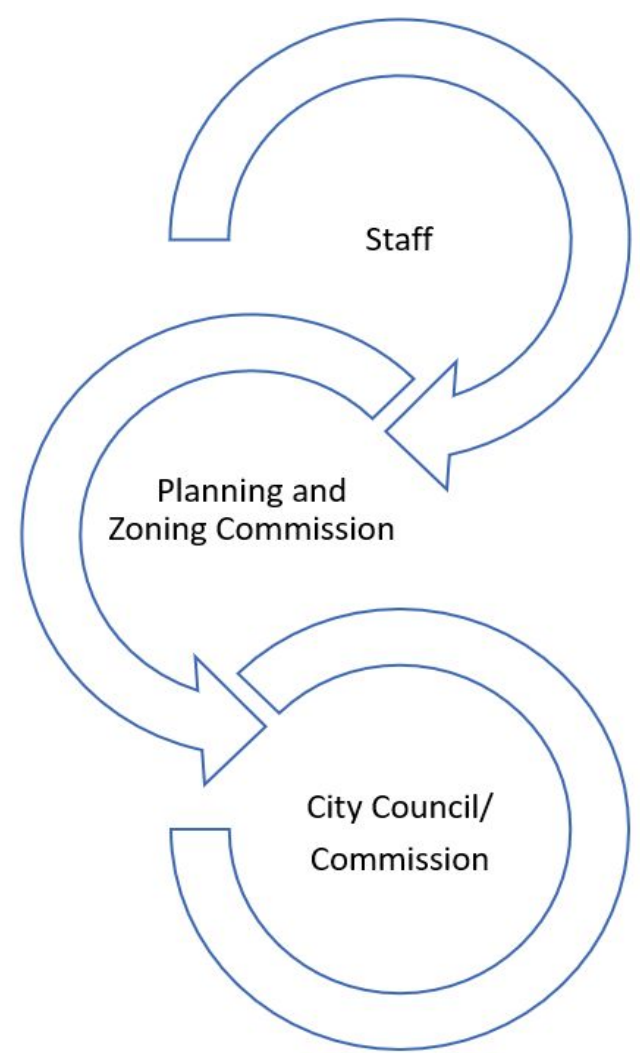
Roles and Process

- Staff - Point of contact, providing procedural guidance to property owners/developers, and recommendations to the Planning Commission.
 - Staff Resources Include:
 - Legal, Procedural, and Guiding Documents
 - Planning Associations
 - Peers Across North Dakota and Beyond



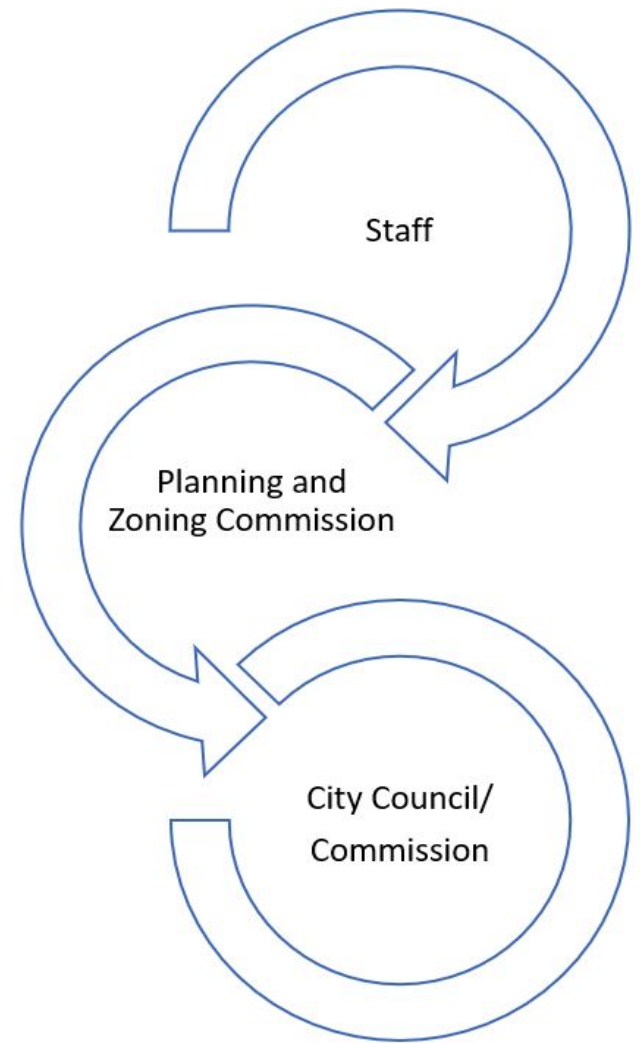
Roles and Process

- **Staff Does:**
 - Explain processes and provides preliminary input on proposals to inquirers
 - Vets applications in line with the zoning ordinance, comprehensive plan, other adopted regulations/policies, and input from internal departments and external agencies
 - Provide a recommendation (staff report) based on known facts
- **Staff Does Not:**
 - Provide a recommendation based on whether or not the application is “liked” or “disliked”
 - Always know how benign or contentious an application may become
 - Choose the applications presented before the Planning Commission



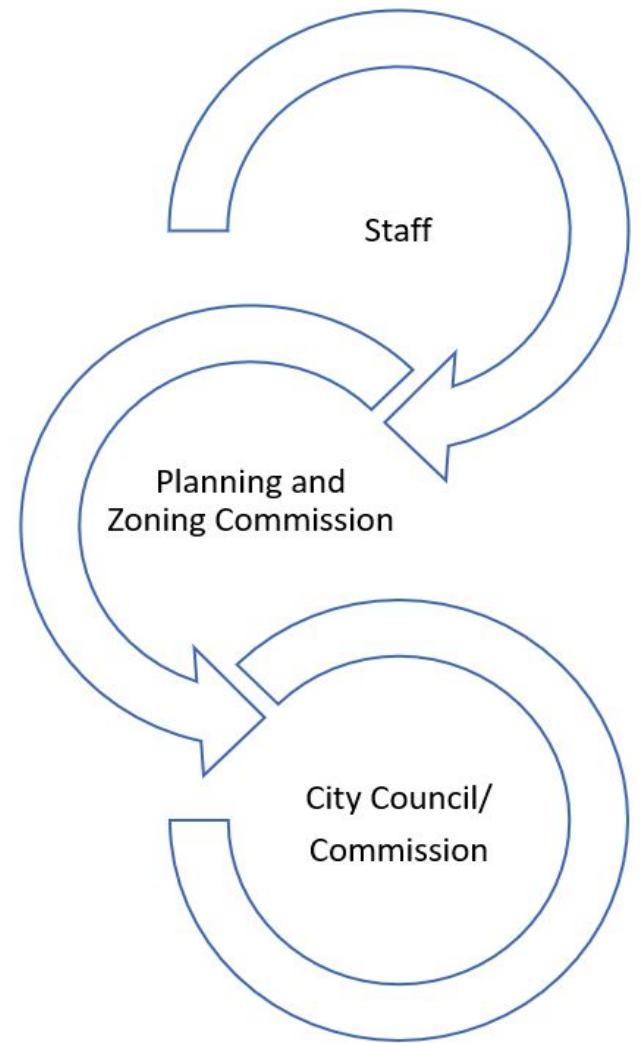
Roles and Process

- Planning and Zoning Commission - Evaluate proposals and provide recommendations to elected body (or possibly final decisions for variances or conditional use permits). Ideally, much of the vetting will be done through this Commission.
 - Planning and Zoning Commission resources include:
 - Staff
 - Staff Reports
 - Trainings provided by North Dakota Planning Association or Other Organizations



Roles and Process

- **Planning and Zoning Commission Should:**
 - Read staff's report to the Planning Commission
 - Ask staff questions related to the application
 - Discuss reasons for or against an item based on the respective criteria for an application (included in report).
 - Provide a recommendation or final decision based on known facts
- **Planning and Zoning Commission Should Not:**
 - Try to convince staff of a recommendation/final decision
 - Make a recommendation counter to staff's without specifying the changing facts that support the recommendation/final decision



Considerations for Decision-making

- Instances in which you may be required to make a decision:
 - Special Use/Conditional Use Permits
 - Generally allows for some discretion of whether a use fits in a particular zone or neighborhood
 - Zone Change
 - Could drastically change the use on the property - how does this affect surrounding properties?
 - Subdivision
 - Could increase toll on utility systems, transportation systems, or change the neighborhood
 - Variance
 - Inherently allows something not allowed by code - why is this alright?
 - Ordinance
 - Changes what is and isn't allowed by code
 - Land Use Plan/Comprehensive Plan amendment
 - Could change the future growth patterns of the city



Considerations for Decision-making

- These decisions can sometimes be hard and complicated.
- Are standards for evaluation available for reference?
 - Generally these would be found in your zoning code or comprehensive plan
 - These must be used for evaluation of decisions
 - In some cases, findings of fact (a document put together by staff or City Attorney) will be required for legal standing for decision making
 - This provides precedent in your community and allows for tracking of the “why” behind decisions
 - It also protects you (if done correctly) in the case of legal challenges



Evaluation Criteria - SPU

The Planning and Zoning Commission, following the meeting at which the special permitted use was considered, shall make written findings certifying compliance with the specific rules governing individual special permitted uses, that the special permitted use will not adversely affect the public interest, and that satisfactory provision and arrangement has been made concerning the following, where applicable:

1. Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.
2. Off-street parking and loading areas where required, with particular attention to the items in "1" above and the economic, noise, glare, or odor effects of the special permitted use on adjoining properties and properties generally in the district.
3. Refuse and service areas, with particular reference to the items in Subsections D.1. and D.2. above.
4. Utilities, with reference to locations, availability, and compatibility.
5. Screening and buffering with reference to type, dimensions, and character.
6. Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.
7. Required yards and other open space.
8. General compatibility with adjacent properties and other property in the district.
9. Use shall not impose a hazard to health or property.



Evaluation Criteria - CUP

Williams County CUP criteria:

- The use complies with all applicable regulations of the district in which it is located or a variance has been granted;
- The use complies with the applicable development standards and performance standards of this ordinance (Article 5 and Article 6
- The establishment, maintenance, and operation of the use shall not be detrimental to or endanger the public health, safety or general welfare;
- The use will not impede the normal and orderly development or impair or diminish the value and enjoyment of other property within the district;
- The physical conditions of the site, including topography, drainage, size and shape are suitable for the proposed development;
- Adequate utilities, access roads, drainage and other necessary site improvements have been provided or will be provided prior to the conditional use being initiated; and
- Adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion, road dust and impacts to adjoining properties.



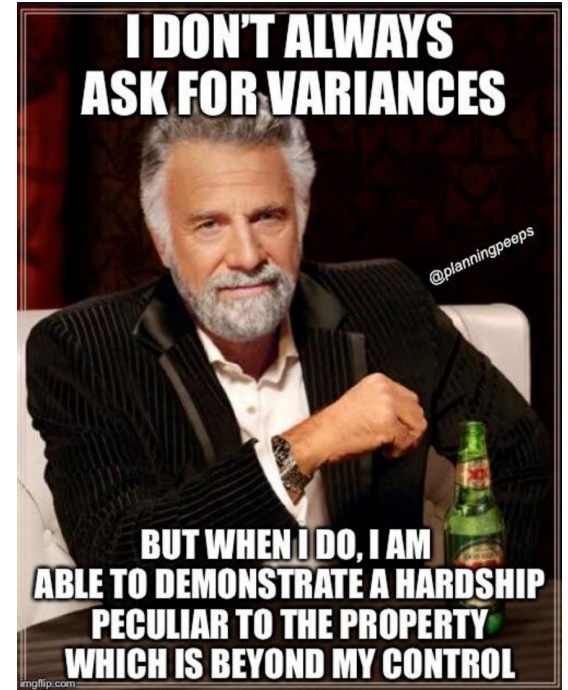
Evaluation Criteria - Variance

Variations. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance would result in unnecessary hardship.

- a. A variance from the terms of this ordinance shall not be granted by the Board of Adjustments unless and until a written application for a variance is submitted demonstrating:
 - i. The special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district.
 - ii. That literal interpretation of the provision of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.
 - iii. That the special conditions and circumstances do not result from the actions of the applicant.
 - iv. That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.



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Evaluation Criteria - Amending Land Use Plan

5.2.12 Process for Amending the Land Use Plan

The North Dakota Century Code requires zoning decisions to be consistent with the comprehensive plan. As a living document, however, the land use plan can and should be amended occasionally. It is important to formalize a process for considering amendments so that all stakeholders understand how to address development proposals which are inconsistent with the plan (i.e., by amending the plan, if not the proposal.)

When a proposal is made that is not consistent with the plan, this should be identified prior to the project being placed on an agenda for a zoning change or subdivision. Land use inconsistencies could relate to the land use designation or the size and density of the development. In addition, proposed developments could be inconsistent with planned arterial or collector roadway alignments, or be poorly integrated with the local roadway network. For example, if a subdivision is proposed that does not include right of way for a collector street connection that is shown in the plan, the plan must be amended, the proposal revised, or the proposal denied.

The process of amending the land use plan is as follows:

1. Prepare a sketch of the proposed land use change and identify the inconsistency.
2. Application for Amendment
 - a. If inconsistencies are present, the developer must apply for an amendment to the land use plan. Issues should be discussed between the developer and the City Planner and Engineer. Surrounding property owners should be notified of the application prior to adding the item to the agenda of the Planning Commission meeting. As part of the review for a land use plan amendment, the City will consider the following:
 - i. Is the proposed land use compatible with existing land uses, existing zoning designations, or approved subdivisions?
 - ii. Is the proposed change compatible with surrounding future land uses, or does it result in the need for other land use plan changes to bring about future land use compatibility? If so, have those changes been included in the proposed amendment?
 - iii. Does the proposed change result in the need for changes to streets and roadways to bring about existing or future continuity and connectivity? If so, have those changes been included in the proposed amendment?
 - iv. Can the proposed change be accommodated by the surrounding infrastructure (roadways and utilities)?
 - v. Is the proposed change consistent with the goals and objectives of the comprehensive plan and with other adopted plans and policies of the city?
3. Planning Commission Public Hearing
 - a. Based on the staff findings and recommendations, combined with the input received at the public hearing, the Planning Commission determines whether to approve or deny the application. The item may be discussed at multiple meetings if revision is necessary. Meeting proceedings should be documented and shared with the City Commission along with a recommendation for approval or denial of the requested land use plan amendment.
4. City Commission Public Hearing
 - a. Based on the staff findings and recommendations, along with those of the Planning Commission and the input received at the public hearing, the City Commission votes to approve or deny the application. Meeting proceedings should be documented.
5. Modify the Land Use Map
 - a. If the land use plan amendment is approved, the map is redrawn to show the approved change.



Evaluation Criteria - Subdivisions

- What to look for in a subdivision proposal
 - Compatibility with Comprehensive Plan
 - Is this proposal in line with your comprehensive plan? If it requires an amendment, are you following the process and considering your evaluation criteria?
 - Connectivity
 - How does this proposal tie into your existing street network? Have pedestrian connections been looked at as well as vehicular connections?
 - Zoning
 - Is there a proposed rezone? Does the proposed re-zone meet the needs of the community? Does it cause harm to surrounding properties? Does it constitute a “spot zone”?
 - Transportation and utility needs
 - Does the proposal provide future connections for utilities through the site? Are there planned roads which traverse the property and need platting? Do these roads need to be developed immediately in order to provide connections to the site? Who is paying for and constructing these utilities?
 - Availability of water, sewer, roads
 - Can water and sewer be brought to the property? If not, how will the properties be serviced? Is this way of servicing legal - and does it make sense?
 - Stormwater
 - What will happen to stormwater runoff after development? Do you have a detention pond? Tie into the storm sewer? Is the method legal and does it make sense?
 - Parks & Open Space
 - Do you have a legal requirement to evaluate the needs of your park district or for a subdivision to provide open space as part of the development plan?



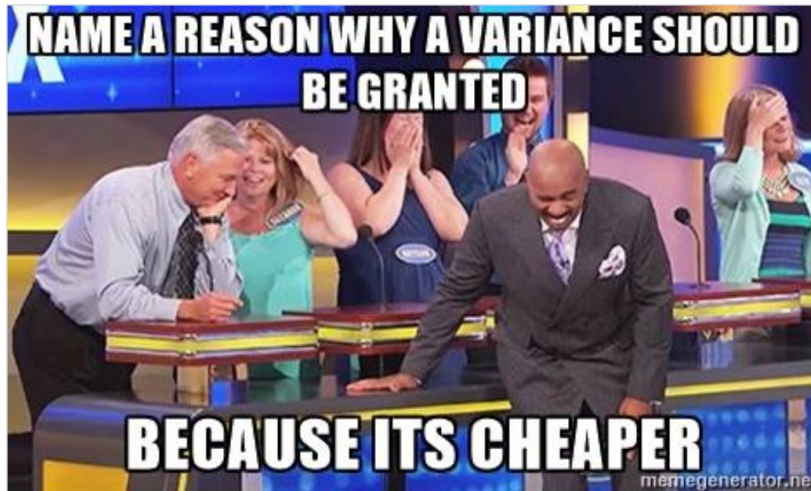
Grey Areas

- Standards for evaluation that might seem to be in a grey area
 - “There are houses around this area, so twinhomes should be ok, right?”
 - The comprehensive plan should address a proposal like this
 - A neighbor “feeling” like the traffic will increase from a development proposal
 - If this is a concern your public works, engineering, or planning staff share, a traffic study at the cost of the developer may be able to be requested
 - However, this reasoning can sometimes be used as a front for other fears, so a study must be warranted.
 - Neighbor concerns regarding look or aesthetics of buildings
 - Typically must be previously addressed in an adopted plan - i.e. a Downtown Design Review board
 - Concerns regarding style of housing (apartments vs. single family), income levels of occupants, or types of commercial businesses entering a commercial zone
 - This may be something that is addressed through your utility capacity, zoning, or future land use plan
 - May NOT be based on discriminatory reasoning - i.e. “low income” housing is not a reason to deny an application.



Bad Decision Making

- Standards for evaluation that definitely won't hold up in court :)
 - "This guy seems nice"
 - "I feel bad for her"
 - "I grew up with his mom"



Factsheet - Example

APPLICATION PROPERTY HISTORY ZONING COMPATIBILITY COMPREHENSIVE PLAN COMPATIBILITY

As part of the review for a land use plan amendment, the City will consider the following:

- a. Is the proposed land use compatible with existing land uses, existing zoning designations, or approved subdivisions?
- b. Is the proposed change compatible with surrounding future land uses, or does it result in the need for other land use plan changes to bring about future land use compatibility? If so, have those changes been included in the proposed amendment?
- c. Does the proposed change result in the need for changes to streets and roadways to bring about existing or future continuity and connectivity? If so, have those changes been included in the proposed amendment?
- d. Can the proposed change be accommodated by the surrounding infrastructure (roadways and utilities)?
- e. Is the proposed change consistent with the goals and objectives of the comprehensive plan and with other adopted plans and policies of the city?

WATER SEWER ROADS/TRAFFIC STORMWATER BUILDING FIRE/DES PARKS AND OPEN SPACE TOWNSHIP APPROVAL PLAT SPECIAL USE PERMIT CONSIDERATIONS

As part of the review for a special use permit, the following items are required to be considered:

1. *Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.*
2. *Off-street parking and loading areas where required, with particular attention to the items in "1" above and the economic, noise, glare, or odor effects of the special permitted use on adjoining properties and properties generally in the district.*
3. *Refuse and service areas, with particular reference to the items in "1" and "2" above.*
4. *Utilities, with reference to locations, availability, and compatibility.*
5. *Screening and buffering with reference to type, dimensions, and character.*
6. *Signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district.*
7. *Required yards and other open spaces.*
8. *General compatibility with adjacent properties and other property in the district.*
9. *Use shall not impose a hazard to health or property.*



Considerations for Decision-making

- Why staff might recommend denial of an application
 - It doesn't meet the comprehensive plan guidelines
 - It doesn't meet the requirements of the zoning ordinance
 - It doesn't meet the requirements of the subdivision ordinance
 - There are no utilities
 - It would create adverse impacts on the neighborhood or residents
 - It may constitute a spot zone
- Reasons staff WON'T recommend denial:
 - The person was mean to us
 - We don't like the proposal
 - We "feel" it will have adverse impacts



Conditions of Approval

- What are conditions of approval?
- Why have them?
- How to determine conditions of approval
- Can conditions go too far?



What are they?

- Actions that are required of the applicant as part of an approval.
- Actions take many forms
 - One-time
 - Continuous



Why have them?

- Mitigation
 - Impacts on general public
 - Impacts on neighboring property owners
- Ensure Long-term harmony of land-use



How are they determined?

- Public comment
- Staff experience
- Impact studies
- Predetermined use standards



Can conditions go “too far”?

Yes, if...

- Unrelated to a proposal
- Disproportionate to address concern stemming from the proposal



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Open Meeting Laws

- Why it Matters
- Standard Guidelines For Meetings
- Special Rules for Emergency Meetings
- Executive Sessions



Ethics



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Ethics and the Public Interest

- The public interest is anything affecting the rights, health, or finances of the public at large.
- The public process must continuously pursue and faithfully serve the public interest.
- Planning process participants continuously strive to achieve high standards of integrity and proficiency so that public respect for the planning process will be maintained.



Safeguarding the Public Trust

- Deal fairly with all participants in the planning process.
- Exercise fair, honest, skilled, informed and independent professional judgment.
- Do not let any official action be influenced by personal relationships.
- Serve as advocates for the public or private sector only when the client's objectives are legal and consistent with the public interest.
- Avoid a conflict of interest or even the appearance of a conflict of interest in accepting assignments from clients or employers.
- Disclose to the public all personal and pecuniary interests, considered broadly, that a participant, serving as an advisor or decision-maker, may have regarding any planning process decision to be made. If at all possible, abstain completely from direct or indirect participation as an advisory or decision-maker in any matter in which there is a personal or pecuniary interest, and leave any chamber in which such a matter is under deliberation



Safeguarding the Public Trust continued

- Neither seek nor accept any gifts or favors, nor offer any, under circumstances in which it might reasonably be inferred that the gifts or favors were intended or expected to influence a participant's objectivity as an advisor or decision-maker in the planning process.
- Do not participate in any matter unless adequately prepared and able to render thorough and diligent services.
- Do not deliberately commit a wrongful act which reflects adversely on the planning process.
- Do not seek business by stating or implying the ability or willingness to influence decisions by improper means.
- Expose corruption wherever discovered.



Due Process

- 5th and 14th Amendments – “No person...shall...be deprived of property, without due process of law”
- Procedural – decisions must be reached in a fundamentally fair manner
- Substantive – regulations must be imposed rationally and reasonably advance a legitimate governmental purpose



Conflicts of Interest

- Defined - “a direct and substantial personal or pecuniary interest in a matter...”
- NDCC 44-04-22
 - o A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body



Conflicts of Interest

- NDCC has additional guidance for various political subdivisions and state agencies
- Check your jurisdiction's policy statements
 - Example – Wahpeton Leadership Code
- Overview of Roles & Responsibilities
- Policies & Protocol Related to Conduct
- Council Conduct with One Another
- Council Conduct with City Staff
- Council Conduct with The Public
- Council Conduct with Other Public Agencies
- Council Conduct with Boards and Commissions
- Council Conduct with The Media
- Conflict of Interest & Personal Benefit
- Sanctions
- Principles of Proper Conduct
- Checklist for Monitoring Conduct
- Glossary of Terms



Ex Parte Communications

- Defined: Communications between decision-maker and an interested party that takes place without public notice, outside of the public hearing, and outside the record
- “Ex parte” means “from one party only”
- Best practices
 - o Avoid discussions between commissioners, with interested parties, and independent research
 - o Disclose all relevant contacts and research on the record
 - o If you do engage in ex parte communications regarding a particular project, you should disclose this when that project comes before your commission



Ethics Scenarios

Your spouse formerly worked for a developer. Some years later, your spouse hopes for work from the same developer, and guess who's before you for a permit? What should you do?



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Ethics Scenarios

The key to the hypothetical situation is not just that your spouse worked for the individual in the past. Previous business dealings with someone appearing before your board is not necessarily enough to establish a conflict of interest, although such past business relationships should be publicly disclosed. More troublesome is the fact that you know your spouse hopes to land more work in the future. As a result, it is conceivable that your decision on the requested zoning change could be affected by this.



Ethics Scenarios

A planner who works for the city planning agency is also a member of the city's Chamber of Commerce.

The planner finds out that a study is being done by another unit in the agency which will recommend substantially reducing the number of on-street parking meters in the central business district to lessen traffic congestion.

Thinking that many local businessmen would oppose such a proposal on the grounds that it would hurt their businesses, the planner, without being authorized to do so, gives the information and draft findings of the study to the head of the Chamber of Commerce.



Ethics Scenarios

If the draft of the study is given to anyone outside of the City, then that document should be made available to all—the document becomes public once released.



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Ethics Scenarios

Is there anything wrong with you using your knowledge of commission affairs to advise friends of pending or future issues? Can you encourage individuals and groups to become active in planning commission affairs?



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Ethics Scenarios

Clearly there is a benefit in public knowledge of matters before the planning commission. Likewise, encouraging advocacy before the planning commission simply makes for a more open and diverse process. However, you should not provide certain information to one group while withholding it from another, or selectively encourage participation only by those who share your views.

While there is nothing wrong with you encouraging public participation, it is often best, if you have a planning director or staff planner, that they be the ones principally responsible for ensuring that all segments of the community are aware of pending or future items that may be of interest.



Planning Terminology and Concepts

- Mixed Use
- Extra-Territorial Jurisdiction
- Annexation
- Non-conforming
- Zoning Enforcement



Mixed Use

THREE GENERAL TYPES OF LAND USE

- Residential—both single-family and multi-family
- Commercial
- Industrial

Generally, a lot is zoned to allow only one land use type as the primary use on that lot.



Mixed Use

- Defined - an individual lot zoned to allow two different land use types as primary uses at the same time.
 - The most common type of mixed use is a lot zoned to allow both commercial and residential uses, such as a building with commercial uses on the main floor and residential uses on the floors above.
 - Such buildings are sometimes described as “vertical mixed use.”



How to Create a Mixed-Use Property

MIXED USE PROPERTIES CAN BE CREATED BY

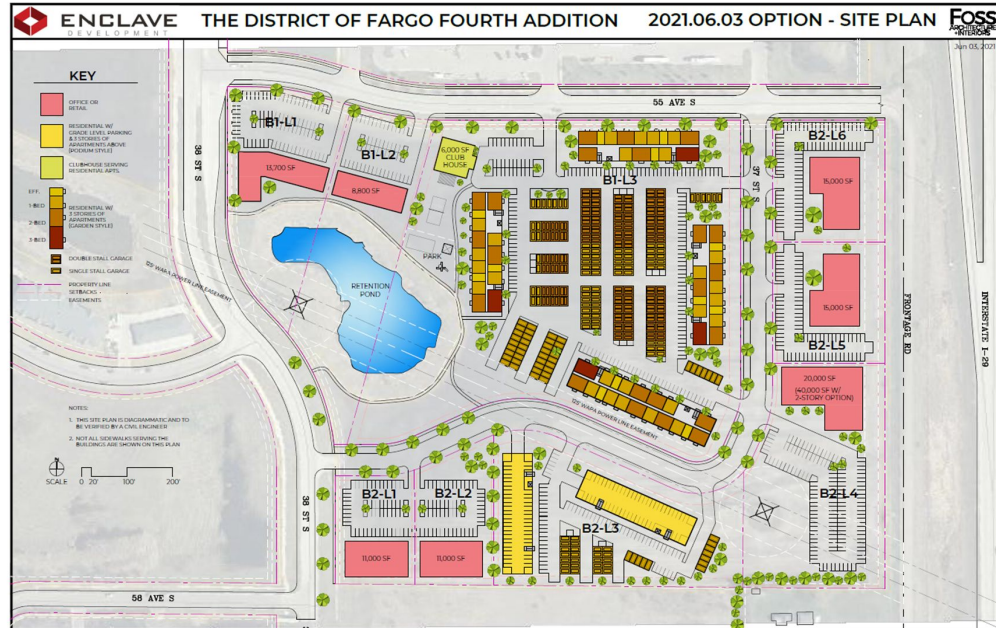
- Having a zone specifically for mixed use in your zoning ordinance
- Having a process that allows a mix of uses on an individual lot basis, such as
 - Conditional Use Permit (CUP) to allow residential uses on a property in a commercial zone
 - Planned Unit Development (PUD) to allow mixed-use zoning on a specific site

Generally, mixed use zones allow but do not require mixed use on all the properties in that zone.



Horizontal Mixed Use

- A development of several lots which has two or more land uses, though each use is on its own lot.
 - Such developments are often created by a planned unit development (PUD).
 - This term is used by developers more than planners.



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What's Not Mixed-Use

- Accessory Uses—uses that are related to the primary use though they are different from the primary use
 - An office in a large factory building that is used for the management of that factory
 - Home occupations, such as a lawyer or hair stylist working out of her residence
 - An on-site caretaker's residence at a mini-storage business
- Adaptive Re-Use
 - Converted buildings, such as a former warehouse turned into an all-residential building.



Extra-Territorial Jurisdiction (ETJ) or Area (ETA)

- Defined - ETJ is an area surrounding a city, outside of the city limits, in which the city has zoning and subdivision jurisdiction, or shares that jurisdiction with another political subdivision.

EXTENT OF ETJ

- The extent of the ETJ is based on a city's population, and is described in NDCC Section 40-47-01.1
- Territory in the ETJ has not been annexed into the city.



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Extra-Territorial Jurisdiction (ETJ) or Area (ETA)

CITY'S JURISDICTION IN ETJ

- The NDCC allows a city to have zoning and subdivision jurisdiction in the ETJ. (NDCC 40-47-01.1 and 40-48-18)
 - This jurisdiction is often shared with another political subdivision in a portion of the ETJ.
- Generally, the township or county has jurisdiction in the ETJ over matters other than zoning and subdivision.
 - However, NDCC 40-06-01 describes the extent of the area outside of city limits in which the city has jurisdiction over certain health and police ordinances and regulations.
- A city's growth plan (master plan) can cover area in the ETJ. NDCC 40-48-08 refers to "land outside [the municipality's] boundaries" that can be included in the master plan.
- ND Attorney General's opinion of March 13, 2014 in response to an inquiry by Grand Forks and Grand Forks County goes into more detail about how city ordinances can apply in the ETJ.



Annexation

- Defined - Extending a city's jurisdictional limits to include adjacent territory.

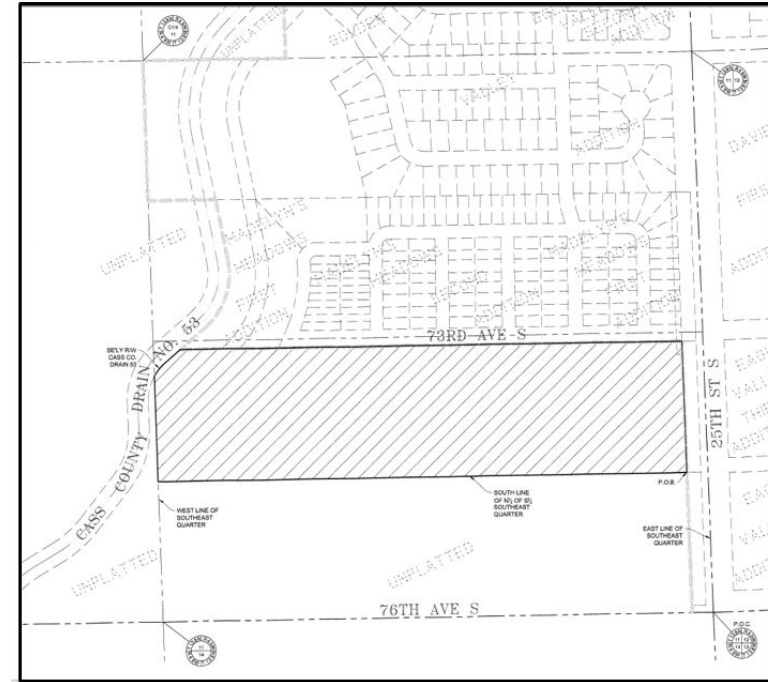
CONSIDERATIONS

- The territory to be annexed must be contiguous with the existing city limits.
- The annexation should be part of a growth plan that the city has approved.
- City services should be able to be extended to the annexed area at the time of annexation or shortly thereafter.

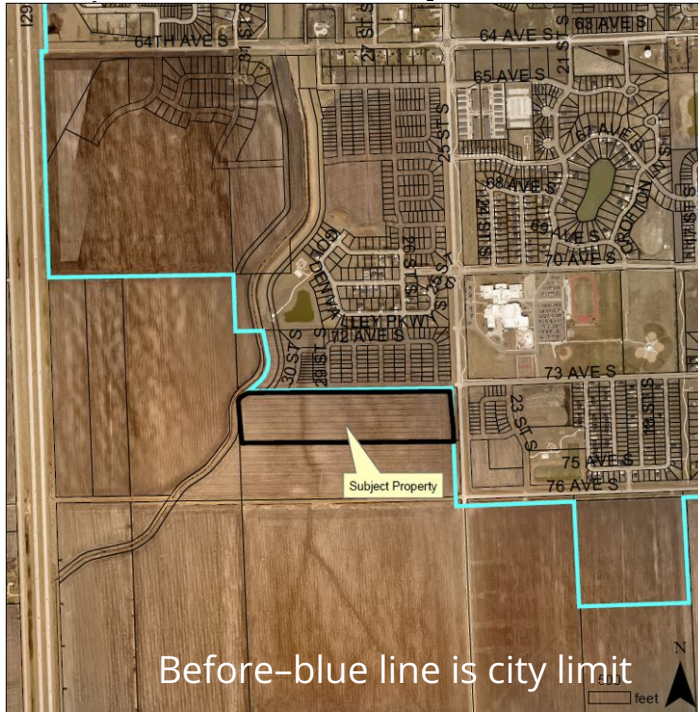


ANNEXATION PLAT

TO THE CITY OF FARGO, CASS COUNTY, NORTH DAKOTA

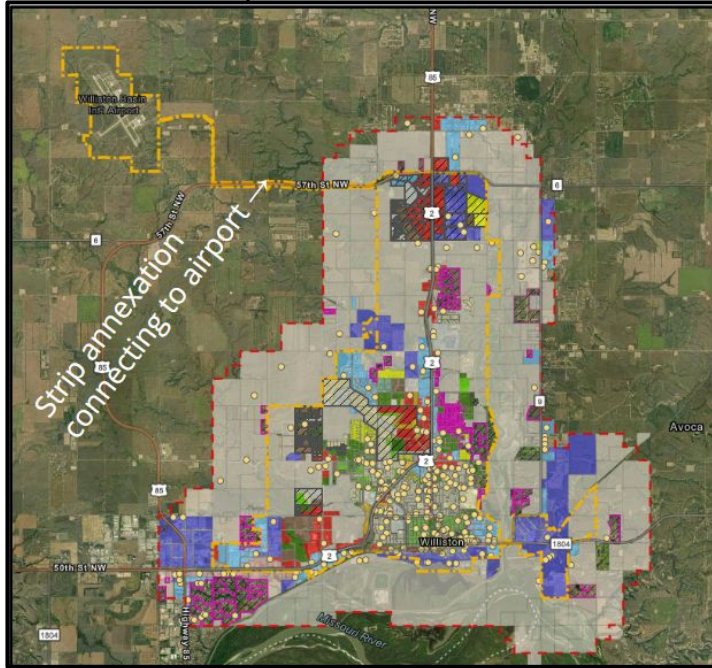


Annexation-before and after

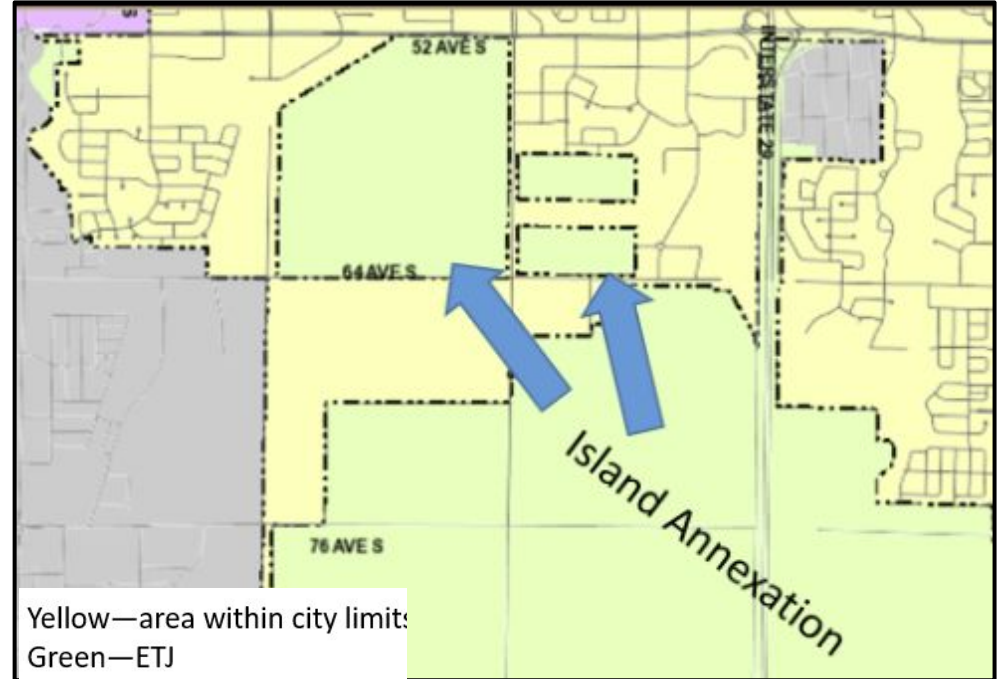


Annexation—strip and island

Strip Annexation



Island Annexation



Annexation-process

NDCC 40-51.2 provides two processes for annexation:

1. Annexation by petition of owners—often referred to as “owner-initiated”
2. Annexation by resolution of the City—often referred to as “city-initiated”

Major differences are:

- Number of appearances before city commission/city council
- Timeline of noticing
- Extent of noticing
- Procedure for protest
- Scope of what can be annexed
- Form of the final document approved by the commission/council---ordinance or resolution



Annexation in relation to ETJ

- ETJ does not automatically extend with annexation.



Non-Conforming

- Defined - a Non-Conforming situation is when the structure, land use, or lot is different from what the zoning or subdivision ordinance would allow in that location

TYPES OF NON-CONFORMING

- Non-conforming Land Use—
 - the land use taking place on the site is not allowed by the current zoning of that site.
- Non-conforming Structure—
 - the structure on the site does not meet development standards, such as setbacks and height limits, for the current zoning of that site.
- Non-conforming Lot—
 - the area or dimensions on the lot do not meet the requirements of the current zoning or subdivision regulations of that site.

A site could have one, two, or all three non-conformities at once



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Non-Conforming

HOW DO LAND USES, STRUCTURES, OR LOTS BECOME NON-CONFORMING?

- True (“legal”) non-conformities result from the land use, structure, or lot having been legally established under a previous zoning or subdivision ordinance, or before a jurisdiction had these ordinances in place.
- Illegal non-conformities result from land uses, structures, or lots that have been established under the current zoning or subdivision regulations but do not meet those regulations. Often these are zoning code violations.



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Zoning Enforcement

- Defined - Zoning Enforcement is the regulatory process to insure that all properties in the jurisdiction comply with the zoning ordinance.
 - Zoning Enforcement differs from building code enforcement and fire code enforcement, which focus on unsafe structures, life safety, and usually property maintenance (junk on the property)

Zoning enforcement complaints are often about

- Structures, such as:
 - sheds or fences that are too large or too close to a property line
- Land uses that are prohibited or restricted in a certain zone, such as:
 - running a business out of a home in a residential area
 - too many people living in a single-family home being used as a rental property



Zoning Enforcement

RESPONSE TO ZONING ENFORCEMENT COMPLAINTS

- Complaints are investigated by city staff, usually from the planning or building inspection department. Some jurisdictions have separate code enforcement departments.
- Jurisdictions should have a standard process for citing a property for a zoning violation—warning letters, ticketing, fines, etc.
- Many property owners comply with an enforcement order. However, some violation cases do end up in court.
- For zoning enforcement to be effective, your city commission or council needs to support the efforts of the zoning enforcement staff.



General Questions



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NDPA and Vision West present:

North Dakota Planning and Zoning Guidebook



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Questions



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Discussion of Future Education Opportunities



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