



Wayzata Planning Commission

Workshop Meeting Agenda

Monday, January 4, 2016

Community Room,
600 Rice Street East,
Wayzata, Minnesota

- 5:30 p.m.** **1. Workshop Items**
- a. Introduction of new Planning Commissioners
 - b. Planning Commission Training with the City Attorney

NOTES:

¹ Time(s) are estimated and provided for informational purposes only.

² Members of the Planning Commission and some staff may gather at the Wayzata Bar and Grill immediately after the meeting for a purely social event. All members of the public are welcome.

BEST & FLANAGAN

Memorandum

DATE: January 4, 2016
TO: Wayzata Planning Commission
FROM: David Schelzel, Wayzata City Attorney
REGARDING: Summary for New Planning Commissioners

This memo outlines some of the key things you should be familiar with as a Planning Commissioner. Always feel free to consult City Planner Thomson or me on any questions you have about this memo or that arise during your term of service.

A. City Charter Establishes Basic Governance Structure

There are two basic types of Minnesota cities: (1) home rule charter cities that operate under a local charter, and (2) statutory cities that operate under the Minnesota statutes statutory city code. Wayzata is a home rule charter city. Home rule charters are, in effect, local constitutions. Home rule charter cities can exercise any powers in their locally adopted charters as long as they do not conflict with state laws.

B. Planning Commission is an Advisory Body to City Council in Land Use Matters

Minnesota law gives cities the authority to regulate use of land within their borders. The “Municipal Planning Act” (Minn. Stat. Sec. 462.351 to 462.364) creates a single, uniform procedure for this regulation that applies to all Minnesota cities. The role of a planning commission under the Planning Act is to review land use matters and *advise the council*. Members of the commission are appointed by Council, and the primary duties of the Commission include:

- Assisting and advising Council in the administration of the Zoning Ordinance, Comprehensive Plan, Design Standards, Subdivision Ordinance and any other land use matters referred to the Commission by Council.
- Reviewing development applications, conducting public hearings, and forwarding a Report and Recommendation to City Council that details the Commission’s finding of facts and its recommendation on a development application.

C. Commission Bylaws Detail Duties of Commissioners and Procedure for Meetings

The Wayzata Planning Commission bylaws detail the commission’s duties and how those duties are carried out by the commission, including:

- Purpose, Duties and Objective of the Planning Commission

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- Membership on the Commission
- Duties of the Chair
- Types of Meetings and Meeting Procedures
- Public Hearing Procedures
- Code of Ethics and Standard of Conduct, including conflicts of interest
- Minutes and Open Meeting requirements

Generally, the chair is point person for the commission and should ensure that the commission carries out its duties in the manner prescribed in the bylaws and City ordinances. The chair's chief duty will be ensuring that Planning Commission meetings and public hearings run in an orderly, fair and efficient manner, in accordance with rules of procedure and the bylaws. In particular, the chair should ensure that:

- Meetings are opened and closed properly, roll and quorum confirmed at the beginning of the meeting, and minutes of previous meetings reviewed and approved.
- The agenda for each meeting is clear, and is followed and covered completely.
- Public hearings on agenda items are conducted in accordance with state law, City Ordinances and the procedure set forth in the bylaws. The public hearing should be open for public discussion until the chair determines that all information and statements have been heard, at which time the chair terminates the public discussion.
- Interaction between the commissioners and the public, and with applicants and their representatives, is conducted in an orderly fashion, and decorum and respect is maintained.
- Proper procedure for entertaining, discussing and passing motions on agenda items is followed (*motion made; motion seconded; motion restated by the chair; motion discussed/debated, amendments entertained; chair closes discussion and calls vote on the motion; commissioners vote; chair confirms vote for the record*).
- The Commission formally acts on each required item as required under the Zoning and Subdivision Ordinances (or continue the hearing and/or meeting on such to a future date, keeping in mind any scheduling concerns and the 60 day rule).
- The Commission works with City Staff, particularly the City Planner, to ensure that all development applications and matters before the Commission are handled in a timely and proper fashion.

D. The Open Meeting Law Applies to any “Meeting” of the Commission (even those that “take place” outside of regular meetings, or via email or social media).

Minnesota's “open meeting law” requires that any meeting of the Planning Commission be open to the public. The law not only applies to the regular, formal meetings of the Commission, but also to any situation where there is a “quorum” of Commissioners discussing a matter that is before the Commission, or is related to something the Commission may otherwise address.

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Email that includes a quorum of the Planning Commission (i.e., a majority of its members) should not involve substantive discussion of any Planning Commission business. Examples to avoid include responding to email messages among members about an application, or using social media to comment among one another about a proposed development. Forwarding emails among members should also be avoided so as not to create a “serial open meeting” violation. For example, commission member A emails member B, B emails C about the issue and C emails A. This creates “serial meeting” and because it is non-public, is it an open meeting law violation. Serial meetings can also occur through correspondence, telephone conferences and other technologies.

The safest solution is for Planning Commission members not to use email to communicate with each other about any particular land use request unless it is for the purpose of receiving information or coordinating procedural matters. It is best practice to follow a “no reply” “no copy” rule when it comes to emails on City business. Never hit “Reply All.” If, however, the Planning Commission or Council members are engaged in direct electronic discussions, it must be limited to only two members, which is below the quorum for a meeting.

Finally, in view of the quasi-judicial role of the Planning Commission highlighted below, avoid sending substantive emails to colleagues, citizens and applicants. Always assume emails “are forever” and, as public data, could be read by anyone. So, while email is a great tool for receiving information from City staff and others, and other types of communications, it should not be used to engage in any discussion or dialog about matters before the Planning Commission.

On a related note, use your City email account (@wayzata.org) exclusively for City-related emails. Avoid using personal email accounts for any City business. This will protect the confidentiality of your personal emails, and help maintain a clear separation between your official role as commissioner and private citizen.

E. Commissioners Need to Maintain Objectivity and Fairness in Evaluating Applications.

A land use decision can “legislative” or “quasi-judicial” in nature. “Legislative” decisions are generally high level, policy decisions of general applicability that are upheld and enforced as long as the City has a rational basis for the decision. Common examples are amendments to the Comp Plan and rezoning of property. By contrast, “quasi-judicial” decisions generally involve the following:

- (1) Review and weighing of evidentiary facts;
- (2) Application of those facts to a prescribed standard; and,
- (3) A binding decision regarding the claim.

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Common quasi-judicial decisions in the land use area are variances and conditional use permits. Quasi-judicial proceedings must provide the applicant with procedural due process and be fair, open, impartial, and must avoid even the appearance of bias.

A 2011 Minnesota case, *Continental Property Group, Inc. (“CPG”) v. City of Minneapolis*, illustrates how careful members of commissions and councils must be in their private conversations and meetings with applicants and citizens. In *CPG*, five months before a Minneapolis council member voted on a CUP and variance application, she told the developer she intended to “turn down the project.” She emailed her constituents that she was not supportive of the proposed high-rise development, helped constituents target supposed undecided members, emailed those colleagues and voted on the CUP and variance requests despite her role as an advocate against the project. The *CPG* court found that the council member had taken an “advocacy” position in opposition and exhibited a “closed mind” prior to the hearings, and that such actions were improper and impermissible for someone acting in a “quasi-judicial” capacity. The court found that the council member’s actions, coupled with reliance by the council on undisclosed communications and evidence, violated the applicant’s right to general due process and concluded that the applicant was entitled to significant compensatory damages and attorney fees.

Thus, in quasi-judicial decisions, Wayzata Planning Commission members should strive to keep an open mind on an application involving a quasi-judicial request through the public hearing process, and take great care not to express any pre-disposed opinion to anyone. Any materials provided to a commissioner should be made part of the record, and communications with applicants or interested constituents should be disclosed as part of the record.

A cautious reading of the *CPG* decision would also discourage Planning Commission members from pre-hearing meetings with applicants or constituents at all. This will certainly preclude the “he said she said” after the fact characterizations of these meetings. However, applicants and neighbors will doubtless continue to attempt to approach and influence Planning Commission and Council members pre-hearing. The safest approach is that such meetings be graciously declined by the member stating that he or she needs to keep an open mind and review all relevant background material in consultation with all other members so that the entire record is open and fair, with the applicant/opposition having the opportunity to rebut or explain any adverse information. At a minimum, such interactions should only involve listening and learning and receiving information; not encouraging, advocating or expressing any view on the matter.

F. Applications Must Be Reviewed and Approved or Denied Within the Time Limits (60 Days /120 Days) Set By State Law.

State law requires that cities act on development applications in a timely manner. The general rule for zoning is that the failure of a city to deny a request within 60 days is approval of the request. Minn. Stat. Sec. 15.99. Similarly, failure of a city to deny a preliminary platting request within 120 days is approval of the request (60 days for final plats). Minn. Stat. Sec. 462.358, subd. 3b.

G. Commissioners Should be Familiar With Basic Types of Land Use Applications.

The basic types of land use regulations reviewed by the Planning Commission involve:

- Zoning (general standards for use of land and structures)
- Variances
- Conditional Use Permits / CUPs
- Planned Unit Developments / PUDs
- Design Standards
- Subdivision Ordinance (lot divisions and combinations; preliminary/final plats)
- Comprehensive Plan

1. Zoning Amendments (text and map) / Sec. 801.03¹.

Generally. Zoning is the primary land use tool to implement the land use guidance of the City's Comprehensive Plan (see part 7 below). It establishes a land use pattern and the orderly development of various types of districts according to the best uses of particular areas of a community. Zoning ordinances may regulate the uses of property, as well as the height, width and size of buildings, and the amount of vacant space on lots in each district. A zoning amendment or rezoning is a *legislative act* (as opposed to *quasi-judicial*) and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare. An amendment to a zoning ordinance may come from the council, the planning commission, or by petition of affected property owners.

Public Hearing and Notice. A public hearing must be held by the council or the planning commission before the city adopts or amends its zoning ordinance. A notice of the time, place and purpose of the hearing must be published in the official newspaper of the city at least ten days prior to the day of the hearing, and mailed at least ten days before the day of the hearing to each owner of affected property within 350 feet of the property to which the amendment applies.

Standards / Review Criteria. Following the public hearing, the planning commission together reviews the proposed amendments, comments from the public hearing, staff reports and any additional information in the record and applies the applicable standards to the request. Under Wayzata's Zoning Ordinance, the Planning Commission must consider the possible adverse effects of the proposed amendment. Its judgment must be based on, but not limited to, the following factors:

1. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.

¹ References are to Wayzata City Code; Ch. 801 Zoning Ordinance or Ch. 805 Subdivision Ordinance

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2. The proposed use's conformity with present and future land uses of the area.
3. The proposed use's conformity with all performance standards contained herein (i.e., parking, loading, noise, etc.).
4. The proposed use's effect on the area in which it is proposed.
5. The proposed use's impact upon property value in the area in which it is proposed.
6. Traffic generation by the proposed use in relation to capabilities of streets serving the property.
7. The proposed use's impact upon existing public services and facilities including parks, schools, streets, and utilities, and the City's service capacity.

After deliberation, the planning commission adopts a report and recommendation to the council that includes findings on the factors above and the zoning ordinances or amendments in final draft form.

City Council Vote. Zoning ordinances and amendments must be adopted by a majority vote of all of the members of Council, unless an amendment to zoning changes all or part of an existing classification from residential to commercial or industrial, where an affirmative vote of two-thirds majority of all of the members of the Council is required under state law.

2. Variances / Sec. 801.05.

Generally. Variances are permitted deviations from provisions of the zoning Ordinance as applied to a particular piece of property. A variance is generally requested for a dimensional standard (such as setbacks or height limits). The decision on whether to grant a variance is a *quasi-judicial* decision.

Public hearing and Notice. A public hearing must be held by the council or the planning commission before the city grants the variance. A notice of the time, place and purpose of the hearing must be published in the official newspaper of the city at least ten days prior to the day of the hearing, and mailed at least ten days before the day of the hearing to each owner of affected property within 500 feet of the property to which the variance applies.

Standards / Review Criteria. Following the public hearing, the planning commission together reviews the variance application, comments from the public hearing, staff reports and any additional information in the record and applies the applicable standards to the request. The key conditions governing considerations of variance requests are:

1. Variances shall only be permitted when they are:
 - (i) in harmony with the general purposes and intent of this Ordinance; and
 - (ii) consistent with the Comprehensive Plan.
2. Variances may be granted when the Applicant for the variance establishes that there are practical difficulties in complying with this Ordinance.
3. "Practical difficulties," as used in connection with the granting of a variance, means that:
 - (i) the property owner's proposal for the property is reasonable but not permitted by

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- this Ordinance;
 - (ii) the plight of the landowner is due to circumstances unique to the property, and not created by the landowner; and
 - (iii) the variance, if granted, will not alter the essential character of the locality.
4. Economic considerations alone do not constitute practical difficulties. Practical difficulties include, but are not limited to, inadequate access to direct sunlight for solar energy systems.
 5. The City Council shall not permit as a variance any use that is not allowed under the Zoning Ordinance for property in the zoning district where the affected person's land is located, except the City Council may permit as a variance the temporary use of a one family dwelling as a two family dwelling.

After deliberation, the planning commission adopts a report and recommendation to the council that includes findings on the factors above and a recommendation on granting or denying the variance.

City Council Vote. Variances must be approved by a majority vote of all of the members of Council.

3. Conditional Use Permits (CUPs) / Sec. 801.04

Generally. Unlike a variance, which is an “authorized violation” of a zoning ordinance, a CUP is a “permitted exception.” Specifically, a CUP is a permit that runs with the land which can be granted for a use identified as an exception in the zoning ordinance. The decision on whether to grant a variance is a *quasi-judicial* decision.

Zoning ordinances generally divide areas of a city into districts and then list the “permitted,” “conditional” and “accessory” uses in each district. Permitted uses are allowed outright without any City review or approval. Conditional uses are those uses and activities that the zoning ordinance permits if certain conditions set forth in the zoning ordinance are met. A city must grant a CUP if an applicant satisfies all the conditions for the CUP listed in the zoning ordinance. A CUP is not a personal license, but a protected property right that runs with the land even after the land is conveyed to subsequent owners. CUPs remain in effect as long as the conditions governing the CUP are observed. Once issued, any conditions of a CUP may not be unilaterally altered by the city or the owner without an amendment.

Standards / Review Criteria. The Planning Commission and City Council must consider all of the “possible adverse effects of the proposed conditional use”, including (but not limited to):

- a. The proposed action in relation to the specific policies and provisions of the official City Comprehensive Plan.
- b. The proposed use's compatibility with present and future uses of area
- c. The proposed use's conformity with all performance standards such as parking, loading, noise, etc.
- d. The proposed use's effect on the area in which it is proposed.

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- e. The proposed impact upon property values in the area in which it is developed.
- f. Traffic generated by the proposed use in relation to capabilities of streets serving the property.
- g. The proposed use's impact upon existing public services and facilities including parks, schools, streets and utilities, and the City's service capacity.

After deliberation, the planning commission adopts a report and recommendation to the council that includes findings on the factors above and a recommendation on granting or denying the CUP.

City Council Vote. CUPs must be approved by a majority vote of all of the members of Council.

4. Planned Unit Development (PUD) / Sec. 801.33

Generally. PUDs are special districts meant to address the disincentives for (1) mixed residential and (2) mixed commercial and residential developments inherent in traditional zoning. The PUD overcomes this problem by providing a means to a developer to plan a variety of designs and uses within a single development, and to build at higher densities in some parts of that development in return for the preservation of natural and unbuildable areas in other parts. A proposed PUD development is reviewed as a whole and against a set of standards outlined in the zoning ordinance. Approval of a PUD District is a *legislative act* (as opposed to *quasi-judicial*) and needs only to be reasonable and have some rational basis relating to public health, safety, morals, or general welfare.

Standards / Review Criteria. Under Wayzata's zoning ordinance, a PUD can be either a *type of conditional use permit* or a *zoning district*. The Ordinance specifically cites the follow things it seeks to encourage:

1. Innovations in development to the end that the growing demands for all styles of economic expansion may be met by greater variety in type, design, and placement of structures and by the conservation and more efficient use of land in such developments.
2. Higher standards of site and building design through the use of trained and experienced land planners, architects, landscape architects and engineers.
3. More convenience in location and design of development and service facilities.
4. The preservation and enhancement of desirable site characteristics such as natural topography and geologic features and the prevention of soil erosion.
5. A creative use of land and related physical development which allows a phased and orderly development and use pattern.
6. An efficient use of land resulting in smaller networks of utilities and streets thereby lower development costs and public investments.
7. A development pattern in harmony with the objectives of the Wayzata Comprehensive Plan.
8. A more desirable and creative environment than might be possible through the strict application on zoning and subdivision regulations of the City.

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Notwithstanding these goals, the PUD is “not intended as a means to vary applicable planning and zoning principles,” and the plan must be consistent with Wayzata’s Comprehensive Plan. The specific criteria for evaluating a proposed PUD are listed in Sections 801.33.2-33.4.

Process. The procedures for the application and approval process of the PUD are outlined in the Sections 801.33.2 - 801.33.10. To summarize generally, a developer/owner must, over the course of the approval process, submit a:

1. “Concept Plan,” which must include information pertaining to ownership of the proposed PUD land, a statement describing the proposed PUD with maps and drawings outlining the units, time frame for development, etc.;
2. “General Plan,” once the Concept Plan has been approved by the City Council, detailing the implementation of the Concept Plan; and
3. “Final Plan Stage” documents, including records of easements and restrictive covenants, final architectural drawings, etc.

City Council Vote. PUDs must be approved by a majority vote of all of the members of Council.

5. Wayzata Design Standards / Sec. 801.09

Generally. The Design Standards apply to all development in the City that has a nonresidential and/or multifamily component and that involves any of the activities listed in section 801.09.1.5.B. The Standards do not apply to single family homes or to limited repairs, replacements, modifications of windows, doors or roofs; exterior painting, interior renovations or site alterations which only repave or repair the existing site. For purposes of the Design Standards, the City is divided into three design districts: the *Lake Street District*, the *Bluff District* and the *Wayzata Boulevard District*. Some of the standards are District-wide, others vary from district to district, and some standards only apply in one District.

Standards / Review Criteria. The design review process is outlined in Sec. 801.09.20 of the Zoning Ordinance. In summary, when staff receives an application for design review, staff reviews the submitted application against the Design Standards ordinance to determine if the application contains the required submittal materials. Once an application has been deemed complete, the application is scheduled for a formal public hearing before the Planning Commission, and staff prepares a staff report and Design Critique on the application, which outlines applicable Design Standard criteria, and whether or not the application conforms with the Design Standards. The Planning Commission should utilize the staff report, the Design Critique, the applicant’s submittal materials, and information received at the public hearing to develop their Report and Recommendation on the application. After the Planning Commission has reviewed and provided a recommendation with appropriate findings of fact on an application for Design Review, it is forwarded to the City Council for their consideration and formal approval or denial of the application.

All applicable standards must be followed for the projects to which they apply unless Council finds that the negative impact of such deviation is outweighed by one or more of the factors listed in 801.09.21.1. These factors are generally less stringent than those used in evaluating a variance. As the Planning Commission is reviewing a project, they will generally get a spreadsheet from the Planner that has all of the different standards that are applicable to the project and a notation of whether each applicable standard is met. If it isn't met, the project has to be denied or it can be approved if certain findings are made under that deviation protocol or a variance.

City Council Vote. Design of a project under the Design Standards must be approved by a majority vote of all of the members of Council.

6. Subdivisions and Platting / Ch. 805

Generally. Under state law, cities have the authority to regulate subdivisions of land for many reasons including encouraging orderly development and planning for all the related necessities such as streets, parks and open spaces. Each city has the authority to adopt an ordinance setting out the standards, requirements and procedures to review, approve or disapprove an application to subdivide a large tract of land in the city. Developers who seek to divide larger tracts of land into smaller parcels in Wayzata for development and sale must follow the Wayzata subdivision ordinances which specify City standards related to size, location, grading and improvement of lots, structures, public areas and trails, streets and lighting, and water, sewer and other utilities.

In conjunction with the authority to adopt subdivisions regulations, cities may, and in some cases must, require plats of the newly subdivided lots. (Plats are maps of small sections of land that show the location of individual lots as well as roads and other landmarks.) State law describes the platting process, but city subdivision regulations may also require plats where any subdivision creates parcels, tracts, or lots.

Standards / Review Criteria. Wayzata City Code Ch. 805 contains the standards, and addresses procedural matters, such as what is required in an application, the preliminary and final review process, the approval/disapproval process, and coordination with other affected political subdivisions and state agencies. Prior to any subdivision, a public hearing is required. Notice of the hearing must be published in the official newspaper at least 10 days prior to the hearing date. In evaluating an application, the Planning Commission must consider possible adverse effects of the preliminary plat. Its judgment must be based upon, but not limited to, the following factors:

1. The proposed subdivision or lot combination shall be consistent with the Wayzata Comprehensive Plan.
2. Building pads that result from a subdivision or lot combination shall preserve sensitive areas such as lakes, streams, wetlands, wildlife habitat, trees and vegetation, scenic points, historical locations, or similar community assets.
3. Building pads that result from subdivision or lot combination shall be selected and located with respect to natural topography to minimize filling or grading.
4. Existing stands of significant trees shall be retained where possible.

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5. Building pads that result from a subdivision or lot combination shall be sensitively integrated into existing trees.
6. The creation of a lot or lots shall not adversely impact the scale, pattern or character of the City, its neighborhoods, or its commercial areas.
7. The design of a lot, the building pad, and the site layout shall respond to and be reflective of the surrounding lots and neighborhood character.
8. The lot size that results from a subdivision or lot combination shall not be dissimilar from adjacent lots or lots found in the surrounding area.
9. The architectural appearance, scale, mass, construction materials, proportion and scale of roof line and functional plan of a building proposed on a lot to be divided or combined shall be similar to the characteristics and quality of existing development in the City, a neighborhood or commercial area.
10. The design, scale and massing of buildings proposed on a subdivided or combined lot shall be subject to the architectural guidelines and criteria for the City's Design Districts and the Design Review Board/City Council review process outline in Section 9 of the Wayzata Zoning Ordinance.
11. The proposed lot layout and building pads shall conform with all performance standards contained herein.
12. The proposed subdivision or lot combination shall not tend to or actually depreciate the values of neighboring properties in the area in which the subdivision or lot combination is proposed.
13. The proposed subdivision or lot combination shall be accommodated with existing public services, primarily related to transportation and utility systems, and will not overburden the City's service capacity.

City Council Vote. Subdivisions (preliminary and final plats) must be approved by a majority vote of all of the members of Council.

7. Comprehensive Plan / Minn. Stat. Sec. 462.352, 355

Foundational Guiding Document. One of the primary responsibilities of the planning commission is to prepare, review, and periodically amend the city's comprehensive plan, in consultation and coordination with other municipal agencies and departments. Preparing a comprehensive plan is a large undertaking that often requires the assistance of a professional planning consultant and the planning staff of the city. Comprehensive plans analyze existing economic, social, and environmental conditions, lay out the goals and policies that will guide future development, and provide the legal basis for land use controls. Land use and zoning regulations are just one aspect of implementing the vision for the city contained in the comprehensive plan. A comprehensive plan is required in the seven-county metropolitan area.

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Adopting and Passing Amendments. A comprehensive plan is adopted and amended by resolution passed by an affirmative vote of at least two-thirds of all of the members of Council. A public hearing must be held on the comprehensive plan adoption and amendments. Notice of the time, place, and purpose of the hearing must be published once in the official newspaper of the city at least 10 days before the day of the hearing. Failure to follow the statutory procedures for the adoption of the plan invalidates the plan.

Comp Plan Controls Zoning. If a city's comprehensive plan in the metropolitan area conflicts with its zoning ordinance, the zoning ordinance must be brought into conformance with the plan. Comprehensive plans in the metropolitan area must also be submitted to the Metropolitan Council for review as to compatibility and conformity with Metropolitan 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.