



IT'S NOT JUST A COLOR ON THE MAP - ZONING IN PLAN IMPLEMENTATION

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12:00 – 1:00 PM

Webinar Summary: Land use regulations are an important part of comprehensive plan implementation. State statute says that zoning must not conflict with the comprehensive plan. However, it also states that comprehensive plans shall provide guidelines for the timing and sequencing of adoption of official controls to ensure planned, orderly, and staged development and redevelopment consistent with the comprehensive plan. This webinar will discuss how land use regulations fit within a broader implementation framework. Communities will hear about approaches that provide a framework for changes in land use regulations, including the timing of those changes.

QUESTIONS AND ANSWERS:

1. What are the risks if we don't rezone to be consistent with our comprehensive plan?

Mike: Risks if you don't rezone. We have to consider the when/why of this question. When you make your zoning is, should be, first of all, grounded in the comprehensive plan and you should be explicit in why you might not be rezoning in terms of those connected actions that relate to implementation. Let's look at the question of risk. One risk might be that if you don't initiate zoning changes you might not be effectively implementing your comprehensive plan. One example is, maybe there is a market opportunity and a developer overlooks a sight because it's not zoned properly. Or, maybe they do their due diligence and they know that a zoning change might be possible, but they feel like it's too risky because of fear over controversy over the rezoning and protracted public process. Thinking about legal risks (disclaimer, I am not an attorney), maybe a property owner proposes a project that they see as consistent with the comp plan - maybe there's guiding land use or maybe there's a description of what the future of an area might be – and it doesn't have the proper zoning. So, they propose a project, that is, more or less, consistent with 'the spirit' of the comp plan and they request a rezoning and that project is denied. Again, that has both questions about whether or not your community has support for your comprehensive plan, whether the comprehensive plan needs to be revised, and if you deny a project that is not consistent with your plan – deny a rezoning for a project, there could potentially be legal risk in that regard. We are trying to offer you general advice about the timing here, again those decisions are sometimes subject to professional judgement. We don't review those decisions but through webinars like this we try to provide some context for helping you make those decisions.

Lisa: One other thing, a risk that a community might have if they don't rezone is the potential for uses under their current zoning that might be allowable that aren't consistent with their vision in their comprehensive plan.

Mike: True, we had talked about non-conforming uses and how to handle them. While you may not make radical changes in your zoning, you could make changes that help mitigate changes that you don't want to see.

2. If I do a zoning study and make some mapping changes, do I have to amend my comp plan?

Lisa: I think the question is whether in making those changes to your zoning if they continue to carry out that vision. Part of what your comprehensive plan should do is identify in those land use districts and in the overall subsections of your community, whether it's a neighborhood, or your downtown, or your

station area, what your community's goals are for that particular area, or that particular district. If your zoning study makes a determination that this is how you're going to carry it out, then you've made that determination on consistency. But if there is a change that you find in your zoning study that is a wholly different kind of use all together – let's say you originally guided in your plan lower intensity industrial uses, but through your zoning study that you find that you should actually be doing some high density residential – those are incredibly different types of uses that would point to us and hopefully point to you that you should go back and make some amendments to your plan.

Mike: I think the best practice is that as soon as you realize that maybe there's an objective that changes the philosophy at the city level more amenable to a use that wasn't a vision in your plan, you should change your plan. Do that concurrently or in advance of the zoning change.

3. From your experience, how do you address fair housing and affordable housing dilemma planners always face where they're doing comp planning and zoning, where their comp planning and zoning allows it, but the type of housing faces neighborhood opposition? Or in some cases comp plan and zoning discourage certain types of housing or housing density in certain areas which is against the Federal Fair Housing law. How do you balance the law and local desires?

Lisa: Well I think there's two questions that we want to split out. One is basically dealing with neighborhood opposition and the other one is more to that second part which is limiting of different housing types. The neighborhood opposition is more of almost a political question than a zoning question and gets to some of what Mike was speaking to earlier – do you have champions of your community, do you have buy-in and support from your planning commissioners and your city council.

Mike: The best comp plans aren't going to eliminate controversy, but they can help mitigate and help identify champions and mitigate negative opinions about these types of things.

Lisa: We don't know that there is a 'zoning silver bullet' per se that's going to ever help with solving the neighborhood opposition problem unfortunately. It will probably come up even when you do have strong support across all the boards, no doubt there will probably be somebody who might make a stink about it. To the other piece, the second question was related to balancing fair housing need where particular zoning might have restricted certain housing types. There is a level of specificity that can happen in your zoning that can sometimes be restrictive and limit affordability of certain housing types. One of the handouts that we included in today's webinar was about zoning considerations for affordable housing. I would encourage the questioner to review those materials because there is a whole bunch of things including the parking requirements, the setbacks, but also whether it's necessary within your zoning ordinance to limit your zoning to only single family uses. Duplexes with site form-based code and design actually still fit within that. Triplexes and quads, if the character of the neighborhood is still established and is still being carried out through a different use, is the density really that important. I think that we would encourage folks to consider zoning that allows for more flexibility within certain character types and not to get to trapped by very singular use type zones. I do want to point to, and Raya will talk about this in the future, the Council is working on some model fair housing policy that may be helpful in this context as well that will be forthcoming later this year.

4. I'm curious whether the response to form-based codes has been favorable both in terms of implementation and community economic development benefits.

Mike: I did include a little bit about form-based code in the presentation, but I do not consider myself to be a form-based code expert. One community in the region has been exploring form-based code and one of the challenges is it does involve a new way of looking at zoning. It requires more effort and if you are starting your code from scratch there is going to be a fair level of effort. In talking to a colleague during this process, they worked a lot with property owner stakeholders and what I got from that

conversation was that when the property owner understood the objectives that were outlined in the form-based code, they were a little different than what the property owner was planning but they saw why the city would want to do it that way and came onboard. So, I think one of the benefits of doing a form-based code is that people have a better expectation over outcomes that come out of zoning. Again, I am not a form-based code expert and I encourage people to explore resources about that topic.

5. How should zoning approach the issue of non-conforming uses?

Lisa: Your comprehensive plan should provide as much guidance as you can, especially where you expect areas in your planning process where you've identified that you are going to have some transformational change happening there. Whether you've identified this specific to an opportunity redevelopment area or a specific redevelopment site, or a combination of sites, or very broadly more of a downtown area, or a corridor, like Mike was talking about earlier. You'll know what's on the ground when you're developing that vision for the area so as part of that planning process you should think about how you transition from what's on the ground today to where you want to be in the future.

Mike: One thing I'm fond of saying is that 'you don't want the perfect to be the enemy of the good'. I appreciate the fact that visions may be very visionary, but the reality is that you may be stuck with some uses for some time or maybe those are uses that the community is fond of but maybe not in a building that quite works or in the form of building or new construction that you want to see. I think a lot of communities have taken a middle ground so that improvements can be made in the short-term but new redevelopment would be regulated under new code and provisions.

6. Local government units must adopt official controls, as described in their adopted comprehensive plan. I want to make sure I understand, is it also a requirement to submit copies of the official controls to the Council within 30-days after official controls are adopted?

Lisa: Yes, that is the requirement in statute that after you adopt new controls, or you are making amendments to your controls that you send those to the Metropolitan Council. I do want to emphasize that those are purely for information purposes; that we are not reviewing or approving your ordinances. Often what we do with those is just checking to make sure that there isn't anything in conflict with our Metropolitan System Plans. It also gives us a sense of where folks are across the region and what they are using whether they are using zoning or form-based codes and how prolific it is. It helps give us a sense of what is working and what is not working or new directions that communities may be taking.

Mike: Although we are not charged with a specific role around reviewing those, it is certainly nice to be kept abreast about the kind of changes that are being made. Working with my 13 communities, I hear about some of the zoning work that they are doing, and I can share that information with other communities, i.e., a new transit oriented development district, as in the case of Eden Prairie or other communities that are working on areas that have some higher expectations than they did in the past.

Lisa: It really helps us connect other communities with one another where there might be opportunities to learn from one another.

7. How do you ensure that the interim rural zoning – residential on five-acre tracts - does not eliminate the potential for future development in areas that are desired for utility extensions and higher densities in the future? We are working in a community where an area directly in the community's growth path built out at rural densities and now more urban subdivisions will skip over that area?

It is often more difficult to manage urbanization once a low density quasi-rural development pattern has been established. We encourage communities to take preventative measures that can mitigate or avoid

inefficient land use patterns if they want to allow large lots (between 2 and 8 acre lots) in the interim. These include required placement of the home that allows for potential future subdivision, requiring minimum lot widths along public rights-of-way, using official mapping to lay out a future street grid, and requiring future street rights-of-way in rural subdivisions. Other methods include ghost platting or requiring build-through acreages. Our handout included with the webinar (Flexible Residential Development Examples) provides more detail and schematics with potential different approaches.

8. For Case Study 3 you talked about clustering in rural areas, what are the risk of doing that, people live in rural areas because they don't want to be clustered.

Clustering is one form of rural character. It may not be the preferred option for all households. For areas that will eventually urbanize, it can preserve rural character in the short term, and preserve quality open space in the long term. You are correct that some parts of the market may not be interested in a cluster development and would rather live on a large lot indefinitely. Your community may or may not be the right home for that segment of the market, depending on whether you have areas of your community that are permanently rural.

For areas that will eventually urbanize, potential buyers should be made aware of that fact. Cluster zoning could be an option, or it could be a requirement, depending upon the planning situation, public support, and market conditions. As discussed in the webinar, it is important to have public input and buy-in to your community's plan, and that includes where change should occur and how your community addresses it. Continued engagement with the public as your community grows and implements its plan are an important piece in plan implementation, both for transparency, and to maintain continued support for the plan.

9. Have you seen many communities adopt minimum density requirements (as opposed to maximum density) to control density, and, if so, have such requirements proven successful?

Yes. Many communities have minimum densities in their zoning codes. This approach can be used to implement minimum densities required in comprehensive plans. For greenfield development, a minimum density can ensure that development can support the cost of urban services. A redevelopment example includes the City of Bloomington, where they use different minimum Floor Area Ratios (FAR), along with other dimensional standards.

We're not sure what you mean by "successful"? A minimum floor area can prevent development that is an inefficient use of the site where there is otherwise a market demand. An FAR that is too low (i.e., below what the market will produce) can act as an insurance policy. However, it will not have much impact on development outcomes. An FAR that is too high (i.e., higher than the market will produce) will likely result in numerous challenges and variance applications.

An understanding of various built forms that the marketplace is producing, including various economies of scale of construction, can inform your minimum FAR provisions. Toward that end, communities should also consider how they would handle variance applications. They should also consider how minimum density standards might interact with other site plan requirements like minimum lot size, minimum parking, pervious surface, and landscaping. Bloomington, for example, counts structured parking toward FAR because they place importance on that outcome.

10. During the New Building Form Standards/Mixed Zoning, are you also considering the mix of low income housing?

We did not specifically consider the mix of low income housing for this webinar. The feasibility of affordable and mixed-income housing development is impacted by the availability of land guided and zoned at higher densities. This is due to the economies of scale of multifamily construction. The

Metropolitan Council's [Housing Policy Plan](#) is a resource on addressing the various challenges faced by affordable and mixed-income housing.

11. For Commercial Zoning, it seems like retailers such as Target are starting to down size their building because of online retail, so should communities be zoning for the onset of more warehouses for the storage of Amazon products?

We encourage you to explore the opportunities and challenges in your retail and warehouse markets, as well as global and national trends that might impact your community. We understand generally that there is an overabundance of bricks-and-mortar retail space. However, some areas may be in demand while others may be in decline. Some areas and existing buildings may be adaptable to new uses or candidates for redevelopment. We are not familiar with the specific plans of retailers and wholesalers, or how they might impact an individual community.

If you are experiencing those changes in your community and want to adapt to the changing retail market, we'd encourage you to review your ordinances to see whether they allow for different outcomes. These might include smaller stores, a mix of other uses, reduced/shared parking, or more urban/walkable forms of development. If your community is interested in adapting spaces for warehousing uses, you might also consider reviewing whether your current zoning allows for it, and whether there are changes that you might make to integrate that type of use into your community's character.

12. Is re-(up)zoning an area after a Comp Plan is adopted (in line with the Comp Plan), but prior to any development proposal is made for the area, doesn't that give away one of your major negotiating points with a future developer?

Your question suggests that there may be a market for change, but deficiencies in a community's regulations. We don't recommend relying on a zoning change to leverage outcomes not addressed by the standards in your zoning code. This could stray into an area referred to as "contract" zoning. There is case law in opposition to this practice due to its arbitrary use. Furthermore, zoning is an ordinance. If a development does not proceed, the ordinance remains unless it is changed back. If this were to occur, it may contribute to the perception that they City is acting arbitrarily.

We encourage you to develop zoning tools and development review practices that promote outcomes consistent with your comprehensive plan. One option is to introduce higher performance expectations for projects at the upper end of density ranges. For example, higher densities or building height could be limited to projects that meet comprehensive plan objectives like affordable housing, higher urban design standards, and environmental stewardship. What those terms mean would need to be articulated in your code. Your community might be more concerned with the form of the development. We'd encourage your community to articulate those form or building character needs through design guidelines or through a form-based code.

Please send additional questions or comments to lisa.barajas@metc.state.mn.us or michael.larson@metc.state.mn.us.