

# PLANNING COMMISSION SPRING WORKSHOP AGENDA

APRIL 25, 2023



- **Session 1: FOIA & Communications**
  - Guest Speaker: Charles Finkenbinder – City Attorney
  - Time: 1:00pm - 1:30pm
  - Time Allotted: 15 Minute Presentation & 15 Min Q&A
  - Description: This session is meant to be an overview of the FOIA requirements that would most likely impact Planning Commissioners on a regular basis. The City Attorney will present and then open the floor for discussion.
  
- **Session 2: Appeals Process**
  - Speaker: Kris Paxton – Director of Planning & Development
  - Time: 1:30pm – 1:45PM
  - Time Allotted: 10 Minute Presentation & 5 Minute Q&A
  - Description: This will be a brief discussion on two types of appeals that may come to the Planning Commission. The Director will discuss appeals of code interpretations and appeals of decisions.
  
- **Session 3: Staff Reports**
  - Speakers: Beth Sketoe & Ryan Robeson – Senior Planners
  - Time: 1:45pm - 2:00pm
  - Time Allotted: 5 Minute Presentation & 10 Minute Q&A
  - Description: Staff will discuss the process for Staff Reports, and how staff make their recommendations.
  
- **Session 4: Difficult Decisions**
  - Guest Speaker: Council Member Shelia Isby
  - Time: 2:00pm – 2:15pm
  - Time Allotted: 15 Minutes for Introduction, Discussion by speaker, then Panel-style discussion
  - Description: Council Member Isby has been a Council Member for over 25 years in Conway. She will discuss the process she uses to make difficult decisions, and how she comes to conclusions for difficult decisions.
  
- **Session 5: Quasi-Judicial Role**
  - Speaker: Kris Paxton – Director of Planning & Development
  - Time: 2:15pm – 2:30pm
  - Time Allotted: 5 Minute Presentation & 10 Minute Q&A
  - Description: Discussion of the role of the Planning Commission. What is a “quasi-judicial” role?
  
- **BREAK 15 Minutes (SNACKS/DRINKS: 2:30 – 2:45)**
  
- **Session 6: – Having Better Meetings**
  - Speaker: Kris Paxton – Director of Planning & Development
  - Time: 2:45pm – 3:15pm
  - Time Allotted: Quick overview of PlannersWeb Summary for “Holding Effective Public Meetings” and then a group discussion for 30 minutes. Each commissioner should get an opportunity to speak.
  - Resource: <https://plannersweb.com/2014/10/holding-effective-public-meetings/>
  
- **Session 7: Planning Conway (INTERACTIVE)**
  - Speaker: Kris Paxton – Director of Planning & Development
  - Time: 3:15pm – 4:00pm
  - Time Allotted: 15 Minutes for Zoning, 15 Minutes for Subdivisions, 15 Minutes for Signs
  - Discussion: We will have an early discussion regarding updates to our Zoning, Subdivision, and Sign codes. This will be an interactive exercise to identify the Commission’s views. Each commissioner will receive index cards in which they will submit one to two-word terms to consider for each topic.



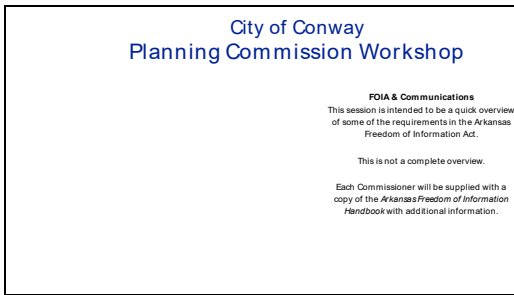
Session 1: FOIA & Communications

Slide 1



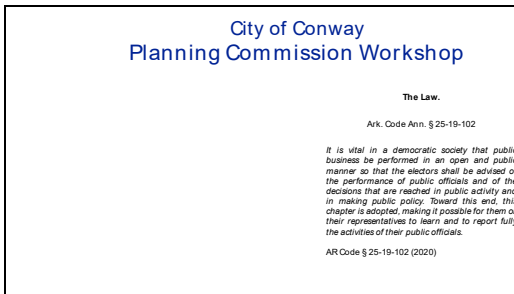
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Slide 2



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Slide 3



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Slide 4

**City of Conway  
Planning Commission Workshop**

**Record Definition**

What is a "public record"?

- (1) Writings, sounds, electronic info, or videos that
- (2) are kept
- (3) that constitute a record of the performance or lack of performance of official functions.

**What is a Public Record?**

In 2022, previous Attorney General Leslie Rutledge stated in a presentation that Public Record is considered writings, sounds, electronic info, or videos that are kept which constitute a record of the performance or lack of performance of official functions.

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Slide 5

**City of Conway  
Planning Commission Workshop**

**Emails, Texts, etc.**

Emails and other forms of electronic communications between public officials could constitute public meetings, just like telephonic communications, and thus be subject to the open-meetings provisions of the FOIA.

City of Fort Smith v. Wade, 2019 Ark. 222, 578 S.W.3d 276

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Slide 6

**City of Conway  
Planning Commission Workshop**

**Emails, Texts, etc.**

- Be careful about sending emails, texts, or even conversations directly to other Commissioners outside of a public session. Ex parte communications could be considered a violation of the open-meetings requirements.
- Examples of possible violations:
  - Commissioners emailing the full commission discussing agenda items.
  - Responding to emails from other commissioners about City business.
  - Discussing opinions about an item with other Commissioners.
  - Soliciting responses or having "preliminary votes" on items before meetings.

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Slide 10

**City of Conway  
Planning Commission Workshop**



**Can Planning Commission have a private meeting?**  
 Legal private meetings are known as "Executive Session".  
 The only given purposes for an Executive Session is for considering the following:  
 Employment  
 Appointment  
 Promotion  
 Demotion  
 Disciplining  
 Resignation of Public Officer or Employee

These are personnel matters. Since the Planning Commission does not have authority over personnel matters, it does not have a legal basis for an Executive Session meetings.

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Slide 11

**City of Conway  
Planning Commission Workshop**

**Fort Smith V. Wade**

In 2019, the Supreme Court of Arkansas heard a case which claimed that the City violated the open-meeting provisions of the Arkansas Freedom of Information Act (FOIA) when three of the city directors and the city administrator exchanged emails relating to city business. For reversal, the City argued that

- (1) emails cannot constitute a meeting because neither the Arkansas General Assembly nor this court has ever expressly stated that a meeting can be constituted by email, and
- (2) even if email can in some cases constitute a meeting, the content of the emails here was merely background information provided in advance of subsequent public meetings.

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Slide 12

**City of Conway  
Planning Commission Workshop**

**Fort Smith V. Wade**

Considering the content of the emails, the Court ruled that:

- 1) Since no response was solicited in this case, and no board members responded, it was just for background information.
- 2) No decisions were made through the use of emails. The City Administrator had sent out recommendations and received 3 unsolicited responses.
- 3) Since no decisions were sought or made, it did not constitute a public meeting.

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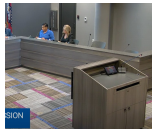


Slide 16

**City of Conway  
Planning Commission Workshop**

**What is the proper way to have a Public Meeting?**

What are "Public Meetings"?



"Public meetings" means the meetings of any bureau, commission, or agency of the state or any political subdivision of the state, including municipalities and counties, boards of education, and all other boards, bureaus, commissions, or organizations in the State of Arkansas, except grand juries, supported wholly or in part by public funds or expending public funds.

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Slide 17

**City of Conway  
Planning Commission Workshop**

**What is the proper way to have a Public Meeting?**

What are people entitled to?

- Time & Place of each regular meeting must be provided to anyone who requests the information.
- Emergency & Special Meetings require media notification at least 2 hours prior to the meeting.

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Slide 18

**City of Conway  
Planning Commission Workshop**

**What is the proper way to have a Public Meeting?**

How are meetings handled?

- All officially scheduled, special, and called open public meetings shall be recorded in a manner that allows for the capture of sound, including without limitation:
  - A sound-only recording;
  - A video recording with sound and picture; or
  - A digital or analog broadcast capable of being recorded.
- A recording of an open public meeting shall be maintained by a public entity for a minimum of one year from the date of the open public meeting.
- The recording shall be maintained in a format that may be reproduced upon a request.

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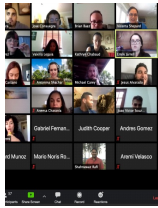
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Slide 19

**City of Conway  
Planning Commission Workshop**



**What is the proper way to have a Public Meeting?**

What about Zoom or Teams?

- If the Governor declares a disaster emergency under the Arkansas Emergency Services Act of 1973 a public entity may assemble, gather, meet, and conduct an open public meeting through electronic means, including without limitation by:
  - Telephone;
  - Video conference; or
  - Video broadcast.

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Slide 20

**City of Conway  
Planning Commission Workshop**

**What is the proper way to have a Public Meeting?**

What is required for Zoom or Teams meetings?

- The public must be able to attend the meeting.
- Notice of the method must be published with the notice of the public meeting.
- Physical presence is not required for commissioners nor the general public.
- Must meet the same recording requirements as an in person public meeting.
- Must meet the same records requirements as an in person public meeting.

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Slide 21

**City of Conway  
Planning Commission Workshop**

**Discussion**

What are some concerns that you, as a Commissioner, have regarding FOIA requests?

What records should be saved by Planning Commissioners, and for how long?

What are the consequences of failing to address a FOIA?

What could happen if a Commissioner intentionally omits or deletes information after a FOIA request?

What other questions or discussion is there from the Commissioners?

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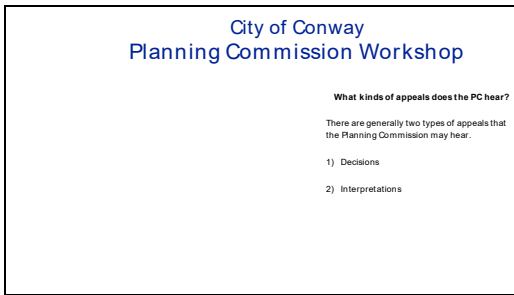
Session 2: Appeals Process

Slide 1



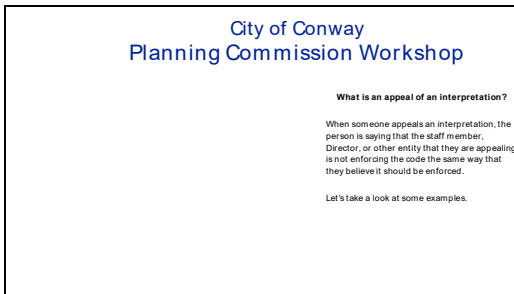
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Slide 2



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Slide 3




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Slide 4

**City of Conway  
Planning Commission Workshop**



**What is an appeal of an interpretation?**

In Nowheresville, Oklahoma, a Planner interpreted a code that states,

"Windows should be 5 feet above the ground in all multi-family development."

The Planner gives a comment and requires an applicant to place windows 5 feet above the ground, or they cannot move forward to the Planning Commission.

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Slide 5

**City of Conway  
Planning Commission Workshop**

**What is an appeal of an interpretation?**

In Nowheresville, Utah, a Planner interpreted a code that states,

"Windows should be 5 feet above the ground in all multi-family development."

The applicant says, "We plan to keep the windows at 3-feet above the ground, because our design work is completed and we do not want to change the interior design considerations."

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Slide 6

**City of Conway  
Planning Commission Workshop**

**What is an appeal of an interpretation?**

In Nowheresville, Utah, a Planner interpreted a code that states,

"Windows should be 5 feet above the ground in all multi-family development."

The Planner says, "The code does not provide a route for a variance for this requirement, and you must meet the requirement before you move forward to Planning Commission."

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Slide 13

**City of Conway  
Planning Commission Workshop**



**What is an appeal of a decision?**

For example, an appeal of a decision that the Planning Commission may hear is a denied variance for a sign permit.

**So what does the Director look at when considering a variance?**

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Slide 14

**City of Conway  
Planning Commission Workshop**

**What is an appeal of a decision?**

The Director begins by looking at the request itself. Some examples include, but are not limited to:

- 1) Does the Director have the authority to grant or deny the variance?
- 2) Is the request a site-specific hardship?
- 3) What impact would the approval of the variance have on the surrounding properties?
- 4) What impact would denying the variance have on the project?

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Slide 15

**City of Conway  
Planning Commission Workshop**

**What is an appeal of a decision?**

In our example, the owner of MyBusiness is trying to put up a 25-foot-tall sign along Main Street in Nowheresville, Oklahoma.

The Director reviewed the permit and noticed that only 10-foot-tall signs and lower are permitted along this route, unless there is a specific hardship provided by the applicant.

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Slide 19

**City of Conway  
Planning Commission Workshop**



**What is an appeal of a decision?**

The owner of MyBusiness sent in a variance request letter and wanted the Director to approve the variance because there are 5 other businesses along Main Street with 25-foot-tall signs, and they want one, also.

4) The Director understands that the applicant doesn't believe it is fair that they will be the first that this code would apply towards, however, does not believe it would have a negative impact on the project.

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Slide 20

**City of Conway  
Planning Commission Workshop**

**What is an appeal of a decision?**

The owner of MyBusiness sent in a variance request letter and wanted the Director to approve the variance because there are 5 other businesses along Main Street with 25-foot-tall signs, and they want one, also.

The Director DENIED the request as presented.

The applicant returns immediately with an appeal...

So let's discuss what the Planning Commission should do...

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Slide 21

**City of Conway  
Planning Commission Workshop**

**What is an appeal of a decision?**

The Planning Commission, in the appeal of a decision to grant the variance, should begin at the request itself being that there are 5 other businesses along Main Street with 25-foot-tall signs, and the applicant wants one, also.

The Commissioners should:

- 1) Consider the staff recommendation.
- 2) Review the code.
- 3) Discuss the differences between the other 5 signs and this request.
- 4) Make a decision based on code considerations, not personal opinions.

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Session 4: Difficult Decisions

Slide 1

	
<b>CITY OF CONWAY, ARKANSAS PLANNING &amp; DEVELOPMENT</b>	
APRIL 25, 2023   DIFFICULT DECISIONS	

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Slide 2



## City of Conway Planning Commission Workshop



**Difficult Decisions**

Council Member Shelia Isby has been a City Council Member here in Conway for the last 25 years. Today she will discuss some difficult decisions that she has had to make, and the processes that she uses in order to make those difficult choices.

There will be a Q&A session after Council Member Isby completes her discussion.

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Session 5: Quasi-Judicial Role

Slide 1



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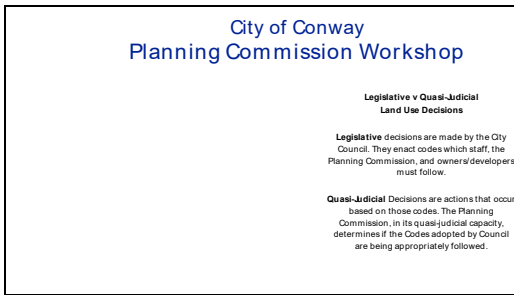
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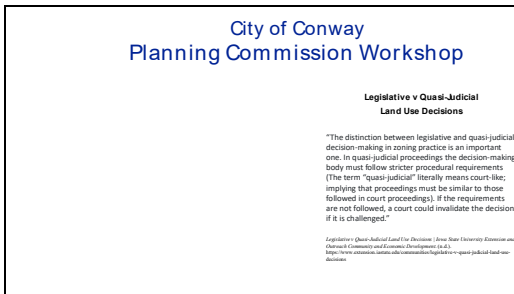
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Slide 3



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Slide 10

**City of Conway  
Planning Commission Workshop**



**Advise the City Council**

The Planning Commission, in regards to legislative actions, is an advisory committee to the City Council. While they have quasi-judicial roles in determining if requests meet the approved codes, the Commission also has an obligation to review codes and plans and advise the City Council on the best route forward for Conway. While a Commissioner may disagree with code, they should always align their decisions with the code as approved by City Council, and if they disagree, may recommend changes to the code.

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Slide 11

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

The Planning Commission votes to recommend approval of Ordinance 23-05 to the City Council to Rezone Lot 123 in the Jane Doe Subdivision after considering the Future Land Use Map.

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Slide 12

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

The Planning Commission votes to recommend approval of Ordinance 23-05 to the City Council to Rezone Lot 123 in the Jane Doe Subdivision after considering the Future Land Use Map.

This is a Quasi-Judicial activity. The primary legislative action that is being considered was the adoption of a Future Land Use Map. While the Commission may have had other considerations, such as site-specific context and allowed uses in the Rezone, they operate in a quasi-judicial capacity in determining if it is an appropriate rezone. The next action would be for City Council to take a legislative action, because this is an ordinance.

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Slide 13

**City of Conway  
Planning Commission Workshop**

In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?

The CITY COUNCIL votes to approve Ordinance 23-05 to Rezone Lot 123 in the Jane Doe Subdivision after considering the Future Land Use Map.

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Slide 14

**City of Conway  
Planning Commission Workshop**

In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?

The CITY COUNCIL votes to approve Ordinance 23-05 to Rezone Lot 123 in the Jane Doe Subdivision after considering the Future Land Use Map.

This is a Legislative action.

While the primary legislative action that is being considered was the adoption of a Future Land Use Map, and the Commission may have had other considerations, such as site-specific context and allowed uses in the Rezone, the City Council takes these considerations and creates a new ordinance which rezones the property (or amends an official Zoning Map, or something similar).

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Slide 15

**City of Conway  
Planning Commission Workshop**

In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?

The Planning Commission for the City approves a Conditional Use Permit and Conditions of Approval.

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Slide 16

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

The Planning Commission for the City approves a Conditional Use Permit and Conditions of Approval.

This one is a little tricky. This is an enforceable action in which the Planning Commission can make new rules specific to a site based on things such as health and human welfare, traffic, and neighborhood specific considerations. The legislative action is granting the Planning Commission authority to take these actions, but the role here is still quasi-judicial, because they are "judging" what would be appropriate at this location based on code considerations and authority granted by the legislative branch.

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Slide 17

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

The CITY COUNCIL for the City overturns a Conditional Use Permit and Conditions of Approval that was approved by the Planning Commission.

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Slide 18

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

The CITY COUNCIL for the City overturns a Conditional Use Permit and Conditions of Approval that was approved by the Planning Commission.

This is a legislative action.

The City Council is the legislative branch of the local government and may overturn decisions from other branches by the appropriate majority vote, usually a 2/3 vote.

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Slide 19

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

A Planning Commissioner brings forward a recommendation to the Planning Commission to change the City Zoning Code because the current Zoning Code requires a Conditional Use Permit for Quadplexes, and a recent housing study shows that there is a need for more housing in the City. This aligns with the Comprehensive Plan, which states that more affordable and attaining housing options should be considered.

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Slide 20

**City of Conway  
Planning Commission Workshop**

**In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?**

A Planning Commissioner brings forward a recommendation to the Planning Commission to change the City Zoning Code because the current Zoning Code requires a Conditional Use Permit for Quadplexes, and a recent housing study shows that there is a need for more housing in the City. This aligns with the Comprehensive Plan, which states that more affordable and attaining housing options should be considered.

This is a Quasi-Judicial activity. The primary legislative action that is being considered was the adoption of the Comprehensive Plan. In the opinion of the Planning Commissioner that brought the item forward, to meet the intent of the Comprehensive Plan, there should be changes made to the code. Further legislative action would result from the City Council making considerations from any recommendation from the Planning Commission.

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Slide 21

**City of Conway  
Planning Commission Workshop**

**DISCUSSION**

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**Session 6: Having Better Meetings**

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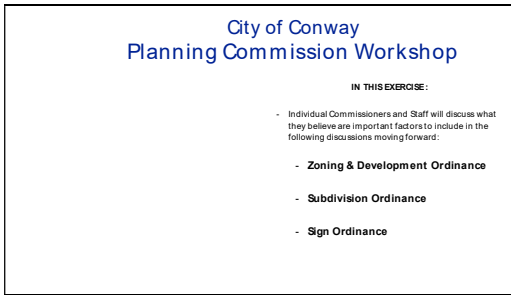
Session 7: Planning Conway – Interactive

Slide 1



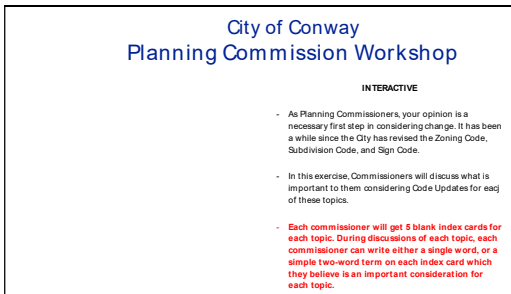
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Slide 2



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Slide 3



Five horizontal lines for notes.



Slide 4

**City of Conway  
Planning Commission Workshop**

**Topic 1**  
Zoning & Development Code

What is good about our Zoning & Development Code?

What needs to change?

Discuss and write one to two words on your index cards to complete this exercise. Staff will collect.




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Slide 5

**City of Conway  
Planning Commission Workshop**

**Topic 2**  
Subdivision Ordinance

What is working in our Subdivision Code?

What changes need to take place?

Discuss and write one to two words on your index cards to complete this exercise. Staff will collect.

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Slide 6

**City of Conway  
Planning Commission Workshop**

**Topic 3**  
Sign Ordinance

Are there things we need to keep in our Sign Code?

How can we improve our Sign Code?

Discuss and write one to two words on your index cards to complete this exercise. Staff will collect.

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