

# PLANNING COMMISSION SPRING WORKSHOP AGENDA

APRIL 25, 2023

# 2

#### • Session 1: FOIA & Communications

- Guest Speaker: Charles Finkenbinder City Attorney
- o 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
- o Description: Staff will discuss the process for Staff Reports, and how staff make their recommendations.

#### • Session 4: Difficult Decisions

- o 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
- o 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

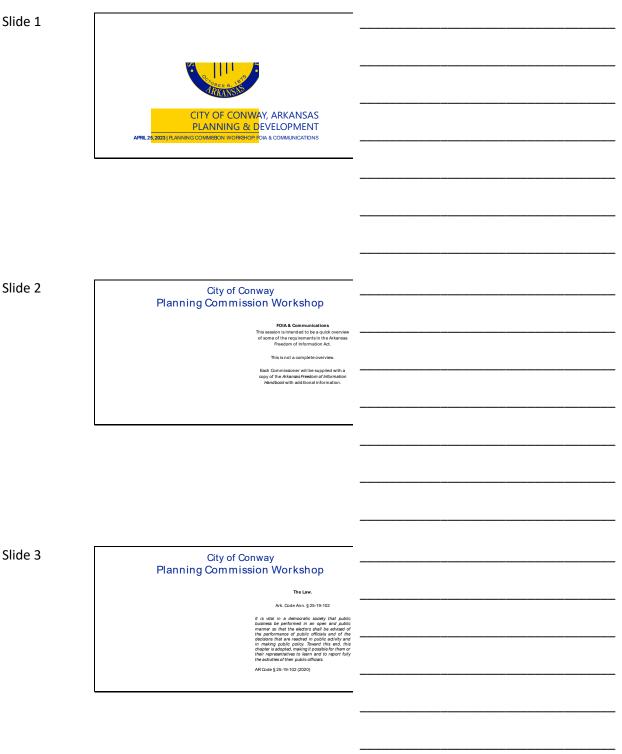
- Speaker: Kris Paxton Director of Planning & Development
- Time: 2:45pm 3:15pm
- Time Allotted: Quick overview of PlannersWeb Summary for "Holding Effective Public Meetings" and then a group discussion for 30 minutes. Each commissioner should get an opportunity to speak.
- o Resource: <u>https://plannersweb.com/2014/10/holding-effective-public-meetings/</u>

#### • Session 7: Planning Conway (INTERACTIVE)

- Speaker: Kris Paxton Director of Planning & Development
- o Time: 3:15pm 4:00pm
- $\circ$  ~ 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





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City of Cor Planning Commiss		
<b>Record Definition</b>	What is a Public Record?	
What is a "public record"? (1) Writings, sounds, electronic info, or videos that (2) are kent	In 2022, previous Attorney General Leslie Rutledge stated in a presentation that Public Record is considered writings, sounds,	

Rutledge st Record is electronic i

Slide 5

# City of Conway Planning Commission Workshop

Emails, Texts, etc. er forms of electronic com lic officials could consti like telephonic communic tt to the open-meetings p , and ns of

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

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-meeting	18
requirements.	
Examples of possible violations:     Commissioners emailing the full commission	
discussing agenda items.	11
<ul> <li>Responding to emails from other commissioners about City business.</li> </ul>	
<ul> <li>Discussing opinions about an item with other Commissioners</li> </ul>	
- Soliciting responses or having "preliminary	
votes" on items before meetings.	

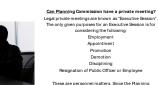


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These are personnel matters. Since the Planning Commission does not have authority over personnel matters, it does not have a legal basis for an Executive Session meetings.

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#### City of Conway Planning Commission Workshop

#### Fort Smith V. Wade

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

Arkansas General Assembly nor this court has ever expres 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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#### City of Conway Planning Commission Workshop

#### Fort Smith V. Wade

- Considering the content of the emails, the Court ruled that:
- Since no response was solicited in this case, and no board members responded. It was just for background information
- No decisions were made through the use of emails. The City Administrator had sent out recommendations and received 3 unsolicited resonses.

 Since no decisions were sought or made, it did not constitute a public meeting.



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Slide 13	City of Conway Planning Commission Workshop	
	What about difficult requests or unclear requests?	
	uested? An unclear request would be one that would prevent the custodian from localing the records. For example:	
	nt. Must be "sufficiently specific to to locate the records with reasonable all/2010	
	ViceAvir JeSt were the Panning Cammission data with zoning on the majority of the work. It is not acquite compit ho locate a record. So what would be a more realistic request?	
	millite Police Dest., 2012 Ank 24,411 I need the records from the Renning Commission recommandations for any recoming of 123 Main Street. 19-0306(19/10/1)	
	the charge minor charge existing egency 19-105(d)(3)(4)(0). ()) () () () () () () () () () () () ()	
Slide 14	City of Conway	
	Planning Commission Workshop	
	What about difficult requests or unclear requests? A voluminous request is one that would contain a lot of records.	
	For example: I would like to request a copy of the minutes from all Planning	
	Commission meetings from 1975 to today. Some of these records may be in paper copy and require time to	
	locate. It is a broad and burdensome request, but that is not a basis to dedine the request.	
Slide 15	City of Conway Planning Commission Workshop	
	How do I handle an information request?	
	A FOIA request is usually sent directly to a proper official	
	at the City. However, here are the steps you can follow: 1) Give an immediate response notifying the person making the request that you have incorrised the request.	
	<ol> <li>Provide all records within 3 business days.</li> </ol>	
	At. Data-Ans. (32-5-105b) (d) any /an. 2005-038 (interpret of the interpret of the required financial for a relative state of the 22-22. (i) If a public record is in active use or storage and therefore not	
	available at the time a citizen asks to examine it, the custodian shall certify this fact in writing to the applicant and set a date and hour writin three. (3) working days at which lime the	
	record will be available for the exercise of the right given.	



#### 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 Sate of Arkansas, except rand jurices supported wholly or in part by public funds or expending public funds;

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.

City of Conway
Planning Commission Workshop
What is the proper way to have a Public Meeting?
How are meetings handled?
<ul> <li>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:</li> </ul>
<ul> <li>A sound-only recording:</li> <li>A video recording with sound and picture; or</li> <li>A rigital or analog broadcast capable of being recorded.</li> </ul>
<ul> <li>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.</li> </ul>
<ul> <li>The recording shall be maintained in a format that may be reproduced upon a request.</li> </ul>



#### Slide 19

#### City of Conway Planning Commission Workshop

# Q. 6

What about Zoom or Teams? If the Governor declares a disaster emergency under the Arkanas Emergency Bervices Act of 1973 a public entity may assemble, gather, meet, and conduct an open public meeting through electronic means, including without initization by: Telephone: Video conference; or Video broadcast.

What is the proper way to have a Public Meeting?

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#### 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. The public must be able to attend the meeting. 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.

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#### 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?



#### Session 2: Appeals Process





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Slide 5	City of Conway Planning Commission Workshop What is an appeal of an interpretation? In Nowherewille, Utah, a Planner interpretation?	
Slide 6	City of Conway	
Silue D	City of Conway Planning Commission Workshop What is an appeal of an interpretation?	

"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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#### City of Conway Planning Commission Workshop

What is an appeal of an interpretation? When the appeal goes to the Planning Commission, the only thing they can consider is one simple question:

"Did the Planner interpret the code correctly? Yes, or No."

If the answer is "No, they did not", then there has to be a clarification statement as to how the Planner misinterpreted the ordinance.

Appeals of interpretations do not usually get a recommendation from staff.

Let's visit the result from the Commission.

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#### City of Conway Planning Commission Workshop

#### What is an appeal of an interpretation?

A commissioner points out a key word in the statement, "Windows should be 5 feet above the ground in all multi-family development."

One Commissioner read the staff report ahead of time and called the City Attorney's office. The City Attorney stated that "should" and "may" statements are optional, and that "shall" and "must" statements are mandatory.



# 13

#### Slide 10

City of Co Planning Commis	
	What is an appeal of an interpretation?
	The Commissioner makes a motion to approv the appeal and darifies in her motion that "Since should' is not a word that would requir windows to be 5 feet above the ground, such as 'shall' and 'must', then the interpretation by the Planner was incorrect."
A BIA	A majority of the Commission approve the motion.

The item then goes back to staff, and staff is required to consider the new interpretation as approved by the Planning Commission during the review process.

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#### City of Conway Planning Commission Workshop

#### What is an appeal of an interpretation?

NOTE: If the Planning Commission voted to sustain the interpretation of the staff member, the applicant could then appeal that decision further to the City Council.

There is no need to change the process. The process needs to stand for itself. The Commission, whether they want further action or not, is a Quasi-judicial actor in this, answering the question,

"Was the code, as it is written, interpreted correctly?"

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	What is an appeal of a decision?	
	Sometimes decisions are complex, and applicants may disagree with those decisions.	
	These are not the same as appeals of the interpretation of code, as the decision itself can be overturned by the Commission.	
	Staff will likely make a recommendation if a decision is appealed.	



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Slide 14

# PLANNING COMMISSION SPRING WORKSHOP: APRIL 25, 2023

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#### 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.

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

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.



Slide 16

City of Co	onway	-
Planning Commiss	sion Workshop	
	What is an appeal of a decision?	
	The owner of MyBusiness sent in a variance request letter and wanted the Director to	



-course more and wanted the Unfector 10 approve the variance because there are 5 other businesses along Main Street with 25-foot-tail signs, and they want one, also. 1) The Director determines that the code gives her the authority to review the request and approve or deny. The code also limits signs to 10-lest in height.

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#### 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-toot-tail signs, and they want one, alow. 2) There is not really a site-specific hardship businesse. However, the Director determined that the other 5 businesses installed their signs before an ordinance charge and these signs are legal nonconforming signs.

City of Conway Planning Commission Workshop	
What is an appeal of a decision?	
The owner of MyBusiness sent in a variance request letter and availated the Diversori to approve the variance because there are 5 other businesses along Main Street with 25-foot-tall along, and they want to e. alon.	
3) The Director determines that while the impact would not be immediate, that this would be an illegin non-conformance to the end of the second second second second second second impact in future enforcement if approved.	



Slide 19

	äty of Conway ommission Workshop	
	What is an appeal of a decision?	
	The owner of MyBusiness sent in a variance request letter and wanted the Director to	
UGH	approve the variance because there are 5 other businesses along Main Street with 25-foot-tall	
ISIONS	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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#### City of Conway Planning Commission Workshop What is an appeal of a decision? The owner of MyBuliness sent in a variance request letter and wanted the Director to for wanted wanted the Director to request letter and wanted the Director to for wanted the Director to for wanted the Director to for wanted the Director to the owner of MyBuliness sent in a variance request letter and wanted the Director to for wa



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	y of Conway mmission Workshop	
	What is an appeal of a decision?	
UGH	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.	
IEAD	The Commissioners should: 1) Consider the staff recommendation.	
	In this case, staff recommends denial of the variance, because of the reasons presented in	
	the staff report (being the considerations made by the Director).	

Slide 23

#### City of Conway Planning Commission Workshop

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

The Panning Commission, in the appeal of a decision to grant the variance, should begin at the request Itselb being that there are 5 other businesses along Main Street with 25-foot-laal signs, and the applicant wants one, also. The Commissioners should: 2) Review the code.

In this case, the code was revised and now requires signs to be 10-feet-tall or lower.

City of Conway	
Planning Commission Workshop	
What is an appeal of a decision?	
The Planning Commission, in the appeal o decision to grant the writanes, should begin the request Ref Brieng that there are 3 of businesses along Man Strate with 25 doubt along, and the applicant water one, alon.	jin at ther
The Commissioners should: 3) Discuss the differences between the of 5 signs and this request.	ther
The other 5 signs were approved prior to code revision. The new code classifies thom signs as legal non-conforming signage.	



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Slide 27	City of Conway Planning Commission Workshop What is an appeal of a decision? DISCUSS	



Session 3: Staff Reports

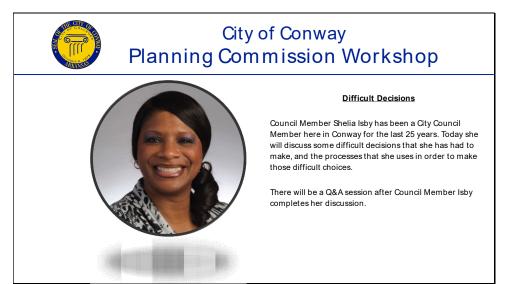



#### Session 4: Difficult Decisions





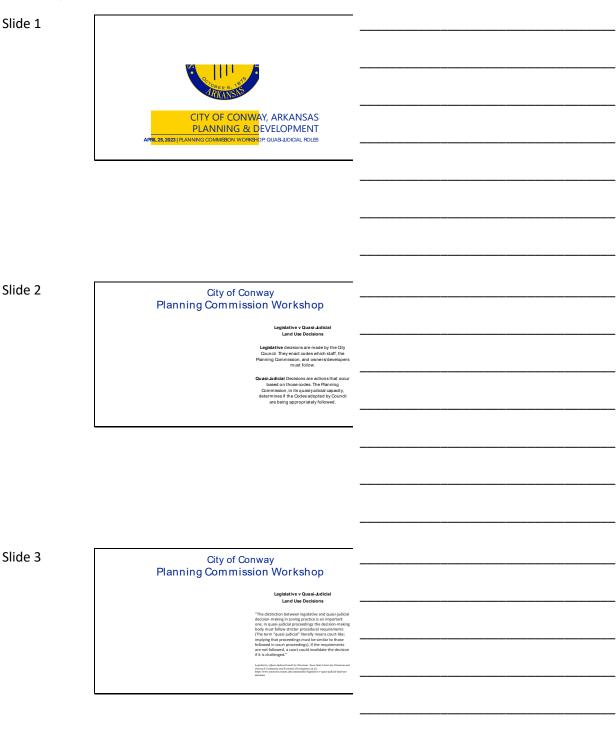








#### Session 5: Quasi-Judicial Role





Slide 4

Slide 5

#### City of Conway Planning Commission Workshop

#### So what is the role of the Commission?

The general purpose of the planning commission is to: Prepare, or have prepared, a plan of the municipality; Receive and maker ecommendations on public and private proposal development; Prepare and distinuits planning regulations Prepare a

Slide 6

#### City of Conway Planning Commission Workshop

Plan Preparation

Preparation of Plans includes working with staff to prepare the Comprehensive Growth Plan, the Master Street & Trail Plan, and other similar plans.

This role is through the Planning Commission's advisory capacity, and must be adopted by the legislative body, being the City Council.



#### Slide 7

#### City of Conway Planning Commission Workshop Make Recommendations

When a new development is proposed, typically approval is based on whether the development meets the requirements of the development code. However, in some instances, recommendations for development from public and private entities may be received by the Commission.

This role is typically through the Planning Commission's advisory capacity. In some cases, a Planning Commission may deny a proposal, if granted that authority by the Council. In most cases where a Planning Commission is given this authority, an appeal route is provided.

Slide 8

#### City of Conway Planning Commission Workshop

#### Administer Planning Regulations

This authority is the true quasi-judicial role of the Planning Commission. The question should never be whether a commissioner does or does not agree with a development, rezoning, or other consideration. The question should always be whether the request meets the intent of the City of Conway's code requirements.

Slide 9

#### City of Conway Planning Commission Workshop Recommend Ordinances

If the Planning Commission does have personal opinions regarding the codes within their wheelhouse, the Commissione, may a whole, not an individual Commissioner, may make a request to the legislative body to change the code.

Quasi-judicial administration should be based on the codes, but through an advisory capacity, the Commission can vote to recommend changes to the Zoning and Development Codes.



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#### Slide 10

#### City of Conway Planning Commission Workshop

#### Advise the City Council



The Planning Commission in regards to legislatite actions, is an advisory committee to the CIP Council. While they have quarticipational relies in obtaining if requests meet the approved orders, the Commission advice the CIP Council on the bart nature forward for Councy. While a Commissioner may diagragere with code, they should always align their decisions with the dec as a sporeed by CIP Council, and if they disagree, may recommend changes to the code.

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.

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 May. While the Commission may have had other considerations, such as site-specific context and allowed uses in the Record, here operate in a quasi-judicial capacity in determining if it is an appropriate rezone. The next action would be for CIV 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.	
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 all-especific context and allowed uses in	
	the Recone, the Cty Council takes these considerations and creates a new ordinance which recones the property (or amends an official Zoning Map, or something similar).	
Slide 15	City of Conway Planning Commission Workshop	
	· · · · · · · · · · · · · · · · · · ·	
	In this example, is this a Lagislative Action or a Quasi-Judicial Action? Why?	
	The Planning Commission for the City approves a Conditional Use Permit and Conditions of Approval.	



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 Qty 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.	
Slide 17	City of Conway	
	Planning Commission Workshop	
	In this example, is this a Legislative Action or a Quasi-Judicial Action? Why?	
	The CITYCOUNCIL for the City overturns a Conditional Use Permit and Conditions of Approval that was approved by the Planning Commission.	
Slide 18	City of Conway	
	Planning Commission Workshop	
	In this example, is this a Legislative Action or a Quasi-Lucicial 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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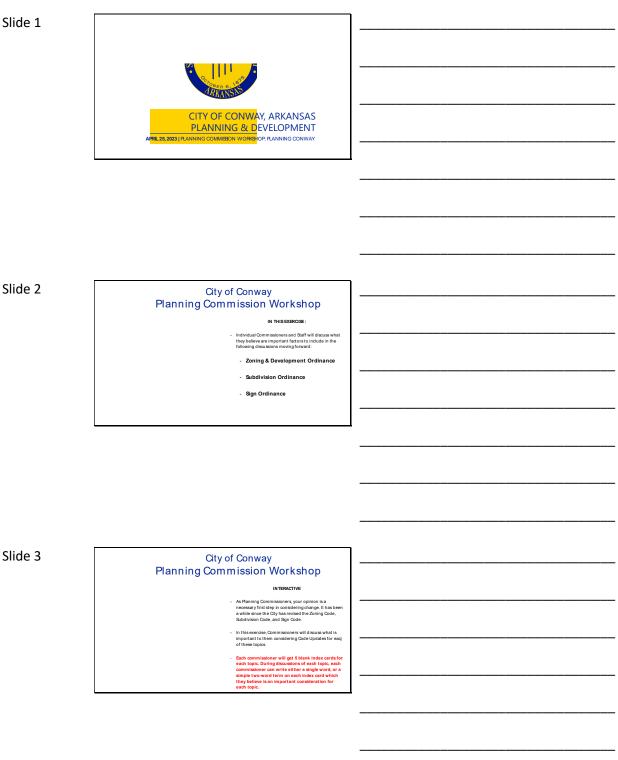
Slide 19 City of Conway Planning Commission Workshop In this example, is this a Legislative Action or a Quasi-Judicial Action? Why? Planning Commissioner brings forward a recommendation to the Planning Commission to change the Zoning Code because the current Zöning Code requires a Conditional Use Permit for Cuadplexes, and a recent housing study alrows that there is a need for more housing in the CIV, This aligns with the Comprehensive Plan, which states that more affordable and attaining housing options should be considered. City Zo 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 Oly Zoning Code because the current Zoning Code requires a Conditional Use Permit for Quadplexes, which a recent housing study shows that there is a need for more housing in the OUV, Thia aligns which the Comprehensive Plan, which states that more alfordable and attaining housing options should be considered. This is a Quasi-Judical 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 lise for evend, to meet the intent of the Comprehensive Plan, there should be changes made to the code. Further legislative action would result from the City Quanti making considerations from any recommendation from the Planning Commission. Slide 21 City of Conway Planning Commission Workshop DISCUSSION



Session 6: Having Better Meetings




#### Session 7: Planning Conway – Interactive





,	2023	

City of Conway Planning Commission Workshop Topic 1 Zoning & Development Code od about our Zoning & Develop ..... What needs to change? Discuss and write one to two words on your index cards to complete this exercise. Staff will collect. 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? nd write one to two words on your i complete this exercise. Staff will col Slide 6 City of Conway Planning Commission Workshop Topic 3 Sign Ordinance ngs we need to keep in our Sign Code? How can we improve our Sign Code? and write one to two words on your index complete this exercise. Staff will collect.