

City of Westwood, Kansas Planning Commission, Board of Zoning Appeals Training

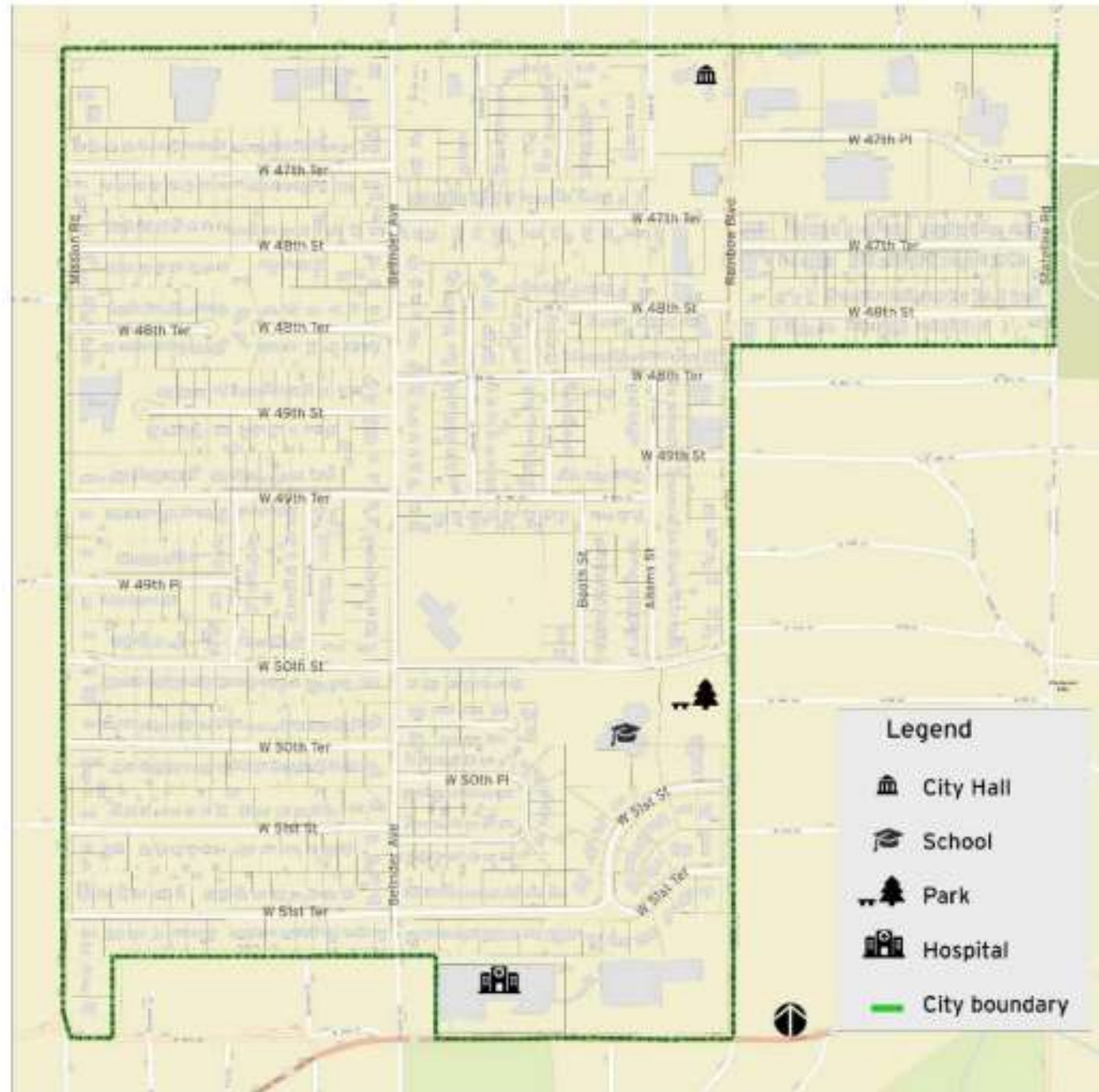
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Outline

- City Planning Generally
- Role of Planning Commission
- Role of Board of Zoning Appeals
- Roles and Responsibilities
- Types of Decisions
- How Hearings Operate
- KORA/KOMA
- Prejudging Applications



City Planning

- Long Range
 - How actions of today impact issues of future
- General
 - Known, anticipated issues and framework to react to unanticipated
- Comprehensive
 - The city as a whole; integrated
- City Building
 - Good civic design
 - Efficient municipal / public services
 - Strong fiscal strategies
 - Places, people, value



Planning Commission

What is the role of the Planning Commission?

- Make comprehensive plan (KSA 12-747(a))
- Approve “location, extent and character” of all public improvements (KSA 12-748(a))
- Review and recommend capital improvement program (KSA 12-748(b))
- Approve plats (KSA 12-745, 12-752)
- Review and recommend zoning changes (KSA 12-756, 12-757)
- Other decisions referred to it by the zoning ordinance (KSA 12-756, 12-757)
- Annual review of the plan (KSA 12-747(d))

Westwood Zoning Code 1.4 establishes this Planning Commission

- Unique Responsibility: Waivers and Exceptions



Planning Commission

Elect Chair and Vice Chair (KSA 12-745)

Elect Secretary (KSA 12-745)

- Does not need to be a member (City Administrator) (KSA 12-745)

Has its own By-Laws



Board of Zoning Appeals (BZA)

What is the role of the BZA?

- This is a “quasi-judicial” function
- Hear and decide appeals alleging an error in any order, requirement, decision, or determination by City Staff regarding the Zoning Code (KSA 12-759(d))
 - May reverse, affirm, reverse/affirm in part, or modify the order, requirement, decision, or determination by Staff (KSA 12-759(d))
- Grant variances from the Zoning Code if the following five conditions are met: (KSA 12-759(e))
 - Variance arises from a condition unique to the property that was not created by an action of the owner/applicant,
 - Granting the variance will not adversely affect the rights of adjacent property owners,
 - Strict application of the zoning code (denial of the variance) would constitute an unnecessary hardship on the property owner,
 - Variance will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare, and
 - Variance will not be opposed to the general spirit and intent of the zoning code

Created by Westwood Zoning Code 1.8



Roles and Responsibilities

Governing Body

- Elected
- Legislative
- Immediate
- Execute the Plan
- Make Laws

Planning Commission

- Appointed
- Policy / Administrative
- Long-range / Vision
- Make Plan
- Recommend / Guide / Apply Laws

Board of Zoning Appeals

- Appointed
- Quasi-judicial
- Adjudicate Specific Questions
 - Variances
 - Appeals



Types of Decisions

	Planning Commission	Governing Body	Board of Zoning Appeals
Text Amendment	<i>Recommendation</i>	<i>Legislative</i>	
Rezoning	<i>Quasi-Judicial Recommendation</i>	<i>Quasi-Judicial</i>	
Special Use Permit	<i>Quasi-Judicial Recommendation</i>	<i>Quasi-Judicial</i>	
Site Plan	<i>Quasi-Judicial Recommendation</i>	<i>Quasi-Judicial</i>	
Exceptions	<i>Quasi-Judicial</i>		
Variance			<i>Quasi-Judicial</i>
Comprehensive Plan Adoption	<i>Legislative</i>	<i>Acceptance</i>	
Fence Variance		<i>Quasi-Judicial</i>	
Plats	<i>Administrative</i>	<i>Administrative</i>	



Types of Decisions

Legislative *Changing the Law*

- Weigh or Make Policy
- Full Discretion
- Open to Wide Considerations

Public Hearing / Testimony

Quasi-Judicial *Evaluate How the Law Applies*

- Weigh Evidence Against Policy
- Targeted Discretion
- Limited to Record

Administrative *Apply the Law*

- No Policy
- Limited Discretion
- Record Only
Applies Facts to Standards

*Public Meeting / Comment
(optional)*



Types of Decisions

Legislative

Changing/Making the law

- Comprehensive Plan
- Zoning Text Amendments
- Full Discretion
- What should we do?

Quasi-Judicial

Determine How the Law Applies

- Rezoning
- Variances and Exceptions
- Special Use Permits
- Targeted Discretion
- How does the law apply to these facts before us?

Administrative

Apply the Law

- Site Plans
- Plats
- Limited Discretion
- How do these facts meet our standards?



Legislative Decisions - Comprehensive Plan

Broadest land use control document. Basis or Guide to ensure harmonious development:

- ❖ General location and relationship of land uses
- ❖ Population and building intensity standards
- ❖ Priority of public improvements
- ❖ Plans (including funding sources) for capital improvements
- ❖ Utilization and conservation of natural resources
- ❖ Any other element deemed necessary

The comprehensive plan is not binding on municipalities

The comprehensive plan does not mandate specific zoning decisions, but is used as a policy guide for future zoning decisions



Comprehensive Plan - Themes

CHARACTER

- Promote and protect the neighborhood character of existing single-family detached homes
- Respecting the scale and design of the existing built environment
- Community civic spaces & additional open green space areas
- Defined gateways and corridors
- Property maintenance & codes enforcement
- Unique and distinctive identity

CHOICE

- Encourage the reinvestment and improvement of existing housing
- Provide homes for all ages and a broader market demand
- Encourage family occupancy while facilitating a housing rental market
- Improved mobility
- Pedestrian and bicycle improvements

COLLABORATION

- Assist the school district with planning for the future
- Existing and new residences – listen to the past, look to the future
- Local businesses, patrons and visitors
- Greater collaboration with neighboring municipalities and other elected officials
- Partnerships with agencies that can build upon a shared understanding of values and culture to support mutual needs of the community



Comprehensive Plan

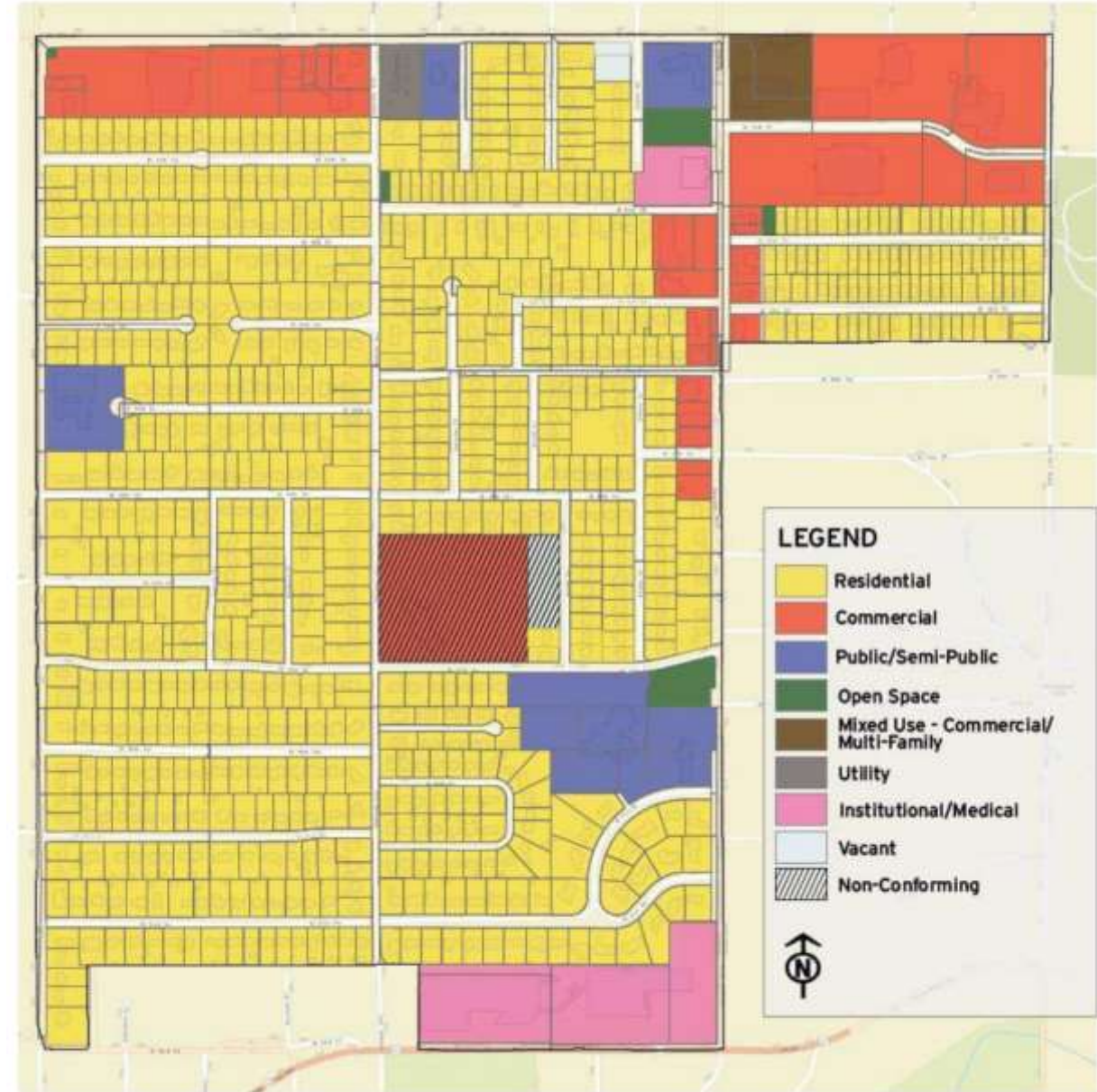
WESTWOOD'S VISION

Westwood, Kansas is a charming, vibrant and diverse city which is safe, walkable, bikeable and comfortable. It is connected to other communities and boasts locally-owned businesses, schools, and parks. Citizens strongly identify with, and value the unique and welcoming character of the community.



Comprehensive Plan

Westwood's Comprehensive Plan outlines the land uses for Westwood's parcels



Comprehensive Plan

Street Classifications

Street Name	Street Type
47th Street	Collector
47th Terrace	Local
47 th Place	Collector
48th Street	Local
48th Terrace	Local
49th Street	Local
49th Terrace	Local
49 th Place	Local
50th Place	Local
50th Street	Local
50th Terrace	Local
51st Street	Local
51st Terrace	Local
Adams Street	Local
Belinder Avenue	Local
Belinder Court	Local
Booth Street	Local
Fairway Road	Local
Mission Road	Arterial
Norwood Street	Local
Rainbow Boulevard	Arterial
Shawnee Mission Parkway	Arterial
State Line Road	Collector

Comprehensive Plan

Framework of the City



Legislative Decisions – Zoning Text Amendments

- These are City-wide decisions that do not affect specific parcels or landowners
- These legislative decisions are entitled to a highly-deferential review by courts
 - Changes in zoning to specific properties are quasi-judicial, and while still given a great deal of deference, courts generally have more ability to review
- Apply to general categories
 - Commercial
 - Residential
 - Business or Overlay District



Quasi-Judicial Decisions – Due Process

- Due Process applies to all quasi-judicial decisions
- Requires that all proceedings be fair, open, and impartial
- What to consider:
 - Pre-judging an application – making statements about how you will vote before considering the application, refusing to listen to or consider information provided by applicant, staff, fellow members of Planning Commission
 - Ex-parte contact – contact with the applicant or opponents to an application outside the public hearing process



Quasi-Judicial Decisions – Rezoning

Golden Factors (*Golden v. City of Overland Park*, 224 Kan. 591 (1978))

- The character of the neighborhood;
- The zoning and uses of properties nearby;
- The suitability of the subject property for the uses to which it has been restricted;
- The extent to which removal of the restrictions will detrimentally affect nearby property;
- The length of time the subject property has remained vacant as zoned;
- The relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner
- Recommendations of permanent or professional staff
- Conformance of the requested change to the adopted or recognized master plan being utilized by the city



Quasi-Judicial Decisions – Rezoning

Westwood Zoning Code 1.6.17

- Incorporates *Golden* factors
- Includes additional factors to consider in addition to *Golden* factors:
 - H. The extent to which the proposed use would adversely affect the capacity or safety of that portion of the road network influenced by the use, or present parking problems in the vicinity of the property.
 - I. The extent to which the proposed use would create excessive air pollution, water pollution, noise pollution, or other environmental harm.
 - J. The economic impact of the proposed use on the community.



Quasi-Judicial Decisions – Variance (BZA)

KSA 12-759(e) and Westwood Zoning Code 1.8.4(C) provide five factors

- (A) That the variance requested arises from such condition which is unique to the property in question and which is not ordinarily found in the same zone or district; and is not created by an action or actions of the property owner or the applicant;
- (B) that the granting of the permit for the variance will not adversely affect the rights of adjacent property owners or residents;
- (C) that the strict application of the provisions of the zoning regulations of which variance is requested will constitute unnecessary hardship upon the property owner represented in the application;
- (D) that the variance desired will not adversely affect the public health, safety, morals, order, convenience, prosperity, or general welfare; and
- (E) that granting the variance desired will not be opposed to the general spirit and intent of the zoning regulations;



Quasi-Judicial Decisions – Variance (BZA)

- Uniqueness: cannot be something that was created by the property owner/applicant.
 - Irregularly shaped lot
 - Topographic features
 - Creek
- Unnecessary Hardship
 - Money is not an unnecessary hardship
 - Cannot be self-created
- Appeal is brought directly to the Johnson County District Court
- The five variance criteria are difficult to meet



Quasi-Judicial Decisions – Exception (PC)

- Westwood Zoning Code 4.5
- Applies to specific parts of the Code
 - 4.3.2 Single-Family Primary Structure Requirements;
 - 4.3.5 Accessory Structures;
 - 4.3.6 Garages;
 - 4.3.7 Building Standards;
 - 4.3.8 Building Additions – Special Conditions;
 - 4.4 New Infill Houses – Special Considerations.

Appeal by the property owner only, to the Governing Body



Quasi-Judicial Decisions – Exception (PC)

4.5.4: Application must meet at least one of the following criteria:

- A. An alternative higher quality development design is being proposed with no negative impacts to either near-by residential or nonresidential properties.
- B. Relief of the development restrictions imposed on the property will ensure low impact land uses, and quality building and site design arrangements in which adjoining residential properties will not be negatively impacted by any deviations from the applicable regulations.
- C. The granting of the waiver or exception will not be opposed the general spirit and intent of the adopted Comprehensive Plan



Administrative Decisions

- Keep it simple: ensure that the standards are met
 - Not engaging in a policy decision about whether the plat is what you want it to be
- Apply the facts (usually from the staff report) to the standards of the Zoning Code
- Stay objective



How Applications Are Heard

- Staff Report
 - Provided in advance – read it and think of questions
 - Staff report is giving you background and facts, not telling you how to make decision
- Comment or Presentation by Applicant
 - Provide additional details on application
 - Will be advocating for acceptance
- Public Hearing
 - If applicable – not all applications get public hearing
 - Time limits for public comments – Chair enforces time and decorum
 - Not a chance to engage in back and forth with public – just listen
- Discussion by Commission
- Decision by Commission
 - Approve, Approve with Conditions, Deny, Table



Kansas Open Meetings Act (KOMA)



Kansas Open Meetings Act (KOMA)

KSA 75-4317 *et seq.*

Passed in 1972, intended to ensure that government business is open to the public

- It is interpreted liberally, and exceptions are applied narrowly

Applies to:

1. A “covered entity” and
2. A “meeting:

PC and BZA are “covered entities”

PC and BZA are “meetings”



Meeting – KSA 75-4317a

“Any gathering or assembly in person or through use of telephone or any other medium for interactive communication by a majority of the membership of a public body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency.”

Majority of membership – open seats still count



Interactive Communication

- Regular Meetings
- Special Meetings
- Work Session
- Telephone/Conference Call
- Video Call
- “Chance” Meetings
- Online Communication – requires contemporaneous interaction
 - Emails:
 - Not interactive where there are reasonable delays between responses
 - Interactive where two or more commissioners are simultaneously sending and responding to messages
 - The same for texting and online messaging



Business of the Body

KOMA is only implicated where members are discussing the business of the body

Does not require “binding action” to be taken

- Just because you are not voting on something does not mean KOMA does not apply

Does not preclude members from interacting socially or on non-body-related matters

Avoid any appearances of impropriety



Serial Meetings

Series of interactive communications

Conducted by less than the majority of the body but collectively involves a majority of the body

Shares a common topic of discussion concerning the business of the body

Exchanges are intended by any or all of the participants to reach an agreement on a matter that would require binding action

Examples:

- Text chain/group text about upcoming PC/BZA issues
- Commenting back and forth on a Facebook post



What does KOMA Require?

Meeting must be open to the public

No binding action taken by secret ballot

Cannot completely prohibit use of recording devices

Must provide notice of date, time, and place of meeting

- Statute is silent on how notice must be given – but should be given a reasonable time in advance

Does NOT require an agenda – but if agenda is made it must be published



Penalties for violating KOMA

Injunction or Mandamus (must refrain from doing something or must do something)

Civil penalties – up to \$500 per violation, can be assessed against individual or body as a whole

Court Costs

Attorney Fees

Invalidate any action taken

Removal from office



Pre-Judging Applications (Don't)



Avoiding Prejudgment

- Do not make up your mind before meetings
- Do not tell people how you are leaning, how you will vote, what you think about the application
 - More difficult in smaller community like Westwood
- Disclose any contact from the applicant directly to you (ex parte contact)
- Abstain from voting if you truly cannot vote impartially



Abstaining and Recusing

- Difference
 - Abstain: participate in hearing/discussion but do not vote
 - Recuse: remove yourself from both the hearing/discussion and the vote
- When to do each
 - Conflict of interest – recuse
 - Leave the meeting until next agenda item
 - No conflict but do not want to vote – abstain
 - Abstain/Recuse only when necessary
 - Case by case decision
- Quorum affected by recusal but not abstention

