

MINUTES OF ZONING AND PLANNING COMMISSION / ZONING BOARD OF APPEALS MEETING

May 22, 2014

7:30 P.M.

1. Roll Call/Call to Order
2. Approval of minutes of Zoning and Planning Commission / Zoning Board of Appeals meeting held on May 8, 2014.
3. Zoning and Planning Commission Discussion
Discussion of rules, regulations, procedures and related matters
4. Other Business

Commission Members Present: Corrado, Frolik, Hill, McCoyd, Mushow, Rose, Whistler

Commissioner Members Absent: Callaway, Torcasso

City Staff Present: Werner

After a roll call establishing a quorum, Chairman Whistler requested a motion to approve the Zoning and Planning Commission/Zoning Board of Appeals meeting minutes for May 8, 2014. Commissioner McCoyd moved to approve the minutes of the May 8, 2014 Zoning and Planning Commission /Zoning Board of Appeals meeting as written. Commissioner Hill seconded and, with a voice vote being all ayes, the motion passed.

Chairman Whistler opened discussion for the agenda item: "Discussion of rules, regulations, procedures and related matters". He stated that this meeting was scheduled to provide an opportunity for the Members of the Zoning and Planning Commission/Zoning Board of Appeals (Z&P/ZBA), in a meeting format designed to discuss their observations and opinions about various aspects in the process to insure that there is a "due process" for each issue/case that comes before the Commission/Board of Appeals. This includes allowing each applicant a full and ample opportunity to "make their case" for zoning relief. It includes the process of allowing the "public" a full and ample opportunity to present testimony in regards to an applicants' request for zoning relief. And, it includes the process of how the Commission/Board "frames" its' recommendations to the City Council.

The following two items were used to provide a "road map" to guide discussion:

ZONING AND PLANNING COMMISSION – ROLE OF THE COMMISSIONER

(June 19, 2009, Revised January 3, 2014).

This document outlines the role of being a Member of the Zoning and Planning Commission/Zoning Board of Appeals. It is used in the selection process and the orientation process for each new Member of the

Commission/Board. And, it is used for reference from time to time by current members of the Commission/Board.

MEMO OF DECEMBER 23, 2013 REGARDING THE 2014 Z&P COMMISSION/ZBA MEETING SCHEDULE.

This Memo stresses the importance of each Members' participation in as many meetings as possible in order to provide a due process of each applicants' request for zoning relief, and the framing of Commission/Board recommendations to the City Council. The schedule for 2014 regular Z&P/ZBA meetings was attached to that memo.

Note: Both of the above documents are attached to these minutes for reference.

Throughout this meeting, Commission Members made thoughtful and very constructive comments with a focus on the following topics:

Commissioner Meeting Attendance

Although it requires five (5) Members of the Z&P/ZBA to constitute a quorum for each meeting, it is also recognized that in order to insure a "due process" for requested zoning land use relief in each case, it is anticipated that "all" Z&P/ZBA Members will attend as many meetings as possible. This is especially important for those "larger" cases where there is not only a local area land use impact, but also those that have a broader community-wide impact. It was the consensus of Z&P/ZBA Members that there is an understanding of the difference in just establishing a quorum vs. the more important aspect of providing "due process" in each case. Members all agreed they will continue to anticipate attending as many meetings as possible throughout the year.

Commissioner Meeting Attendance via Electronic Methods

There was considerable discussion on the pros and cons of allowing Members to attend Z&P/ZBA meetings via electronic communication methods (telephone conferencing, Skype, etc.). It was noted that other groups have done this from time to time, with mixed results. Therefore, the Z&P/ZBA Members consensus is that this subject requires further research in order to move forward with any further discussion. This would include understanding the costs involved, who pays, developing rules and regulations for this type of participation, review the success and/or lack of success that others have experienced, differences in the public hearing process and the deliberation process, legal opinions, etc. City Staff will review the various factors involved prior to further discussion by the Z&P/ZBA Members.

Day of the Week Regular Z&P/ZBA Meetings are Scheduled

After discussing the pros and cons of selecting a different day of the week to schedule regular Z&P/ZBA meetings, the consensus of the Commission/Board was to continue scheduling regular Z&P/ZBA meetings on Thursday evenings.

Start Time of Regular Commission Meetings

After discussing the pros and cons of selecting a different starting time for regular Z&P/ZBA meetings, the consensus of the Commission/Board was to change the start time of meetings from 7:30 PM to 7:00 PM.

However, it is noted that the regular Z&P/ZBA meeting schedule has been published for the year 2014 showing the meeting start time of 7:30 PM. Therefore, this change should be initiated when the regular meeting schedule is published for the year 2015.

This change should be communicated to the public in advance to the release of the regular meeting schedule normally released in late December, just days before it is effective. City Staff will review this and determine how this change in start time is communicated to all interested parties.

Length of Time Scheduled for Regular Z&P/ZBA Meetings

After discussing the pros and cons of establishing an “end time” for regular Z&P/ZBA meetings it was determined that there was merit in doing this. Therefore, the consensus of Z&P/ZBA Members is to establish 10:00 PM as the scheduled “end time” for each regular meeting of the Z&P/ZBA.

Since a scheduled regular meeting “end time” is a new concept it was not included in the published 2014 Z&P/ZBA regular meeting schedule, which is referred to in various City records and on the City website. However, this change could be considered to be implemented earlier than 2015. In doing so all City records must be changed first, and sufficient time must be given to notifying the public in advance to maintain the concept of “due process”.

When making this change, keep in mind that by proper motion and vote at each meeting the end time may be changed based on a majority vote of the Z&P/ZBA.

City Staff will consider how best to communicate and determine the proper timing to roll out this change.

Establish Time Limits for Speakers (Applicants and Interested Parties) at Public Hearings

After considerable discussion, Z&P/ZBA Members felt that because the responsibility for “making the case” in any request for zoning land use relief rests with the Applicant. Therefore, the Applicant should have full and ample time and opportunity to present its’ case in pre-public hearing submittals as well as in testimony at the public hearing. There should not be a pre-determined time limit for the Applicants’ presentation at the public hearing.

When determining not to establish time limits on the Applicants’ testimony at public hearings it is understood that when the Applicant is a contract purchaser of a subject property in a zoning case for zoning land use relief, the current owner of the property, by signing the City application forms requesting zoning land use relief, indicates that the owner(s) fully understands the request being made and is in full support of it. Once the zoning land use relief is granted it runs with the land, not the Applicant.

As it relates to public testimony at public hearings, it was the consensus of the Z&P/ZBA Members that it would be appropriate to set time limits for each member of the public who wishes to enter testimony at public hearings.

Z&P/ZBA Members noted in their discussion that all pre-public hearing Applicant submittals are available for review on the City of Elmhurst web site under “Board Docs” public access. Members of the public can at any time submit written testimony regarding any case in unlimited detail prior to and/or at the public hearing in each case. Such submittals become a part of the case record. Therefore, public speakers at public hearings will be encouraged to focus their comments on the request for zoning land use relief being made in each case.

After careful consideration of the various factors involved, the consensus of the Z&P/ZBA Members is to limit public testimony at public hearings to five (5) minutes.

This will need to be covered with the City Attorney to be sure that by doing so the Commission maintains a process of providing a full and ample opportunity for public input and to insure that this new procedure would be in conformance with the concept of “due process”.

Once the City Attorney determines that it is OK to proceed there will need to be consideration by City Staff on how best to roll out this new procedure to the public and determine a time line for implementation.

Public Hearing Transcripts

It was noted that there have been challenges in regards to some past public hearing transcripts having scribes’ errors from time to time. The Z&P/ZBA Members reviewed this issue and determined that there was no evidence that prior scribes’ errors were material to the intent and purpose of making a public record in zoning land use relief cases. Such scribes’ errors have been clarified and determinations have been made under the concept of due process accordingly. The consensus of the Z&P/ZBA Members was that there should be no changes made to the process and method currently being used for creating transcripts of public hearings. No further action is required at this time.

Location of Z&P/ZBA Deliberation Meetings

The Z&P/ZBA Members discussed the differences in the format used for conducting public hearings where both the Applicant and the public present testimony, versus the format used by the Z&P/ZBA for its’ deliberation and determination in each case. The Z&P/ZBA recognizes how the view of this might well be different on what might be referred to as “small” cases versus the “larger” case where there is so much more Commissioner “across the table dialogue” needed to discuss the various factors in the case.

Keep in mind that deliberation sessions are designed for discussion by Commission/Board Members only. The public record would have been closed so there cannot be further public testimony taken during deliberations. However, the Commission/Board may ask for clarification regarding an issue from either City Staff or the Applicant.

After discussing the pros and cons of changing the current procedure the Z&P/ZBA Members agreed that there was no need to make changes to the deliberation procedures. Therefore, the Z&P/ZBA will, as a standard procedure, move and/or meet in a conference room for deliberations.

Also, the procedure will continue whereby a Commission/Board Member may make a motion, on a case by case basis, to remain in the Council Chambers for deliberation of a specific case.

Other Business –Mr. Werner briefed the Commission on upcoming cases.

The meeting was adjourned at 9:30 P.M.

Submitted by: Nathaniel J. Werner AICP, Planning and Zoning Administrator