

PLANNING COMMISSION MINUTES - CITY OF INVER GROVE HEIGHTS

Tuesday, January 7, 2020 – 7:00 p.m.
City Hall Chambers - 8150 Barbara Avenue

Chair Maggi called the Planning Commission meeting to order at 7:00 p.m.

Commissioners Present: Pat Simon
Tony Scales
Joan Robertson
Brett Kramer
Jonathan Weber
Elizabeth Niemioja
Armando Lissarrague
Annette Maggi
Dennis Wippermann

Commissioners Absent:

Others Present: Allan Hunting, City Planner
Heather Rand, Community Development Director
Eric Carlson, Park and Recreation Director

APPROVAL OF MINUTES

The minutes from the December 3, 2019 Planning Commission meeting were approved as submitted.

PRESENTATION FROM BRIDGET NASON, LEVANDER GILLEN & MILLER

Chair Maggi noted that representatives from other city commissions/committees were in the audience tonight and asked them to introduce themselves. The following representatives were in attendance: Ted Trenzeluk (Environmental Commission), Al Eiden (Park and Rec Commission), Greg Stone (Park and Rec Commission), Mark Freer (Park and Rec Commission), Steve Cook (Park and Rec Commission), Mary T'Kach (Housing Committee), Chris Becker (Housing Committee), and Dan Ward (Housing Committee).

Assistant City Attorney Bridget Nason conducted a training for commission/committee members, primarily to discuss the Open Meeting Law, meetings, Data Practices Act, and conflicts of interest.

Open Meeting Law

Nason noted that all commission/committee meetings are open to the public and are subject to the Open Meeting Law. A meeting is defined as a quorum of the body in which information related to official city business is discussed, decided upon, or received. Notice of such meetings must be posted per Statute and accessible to the public. She explained how unintentional Open Meeting Law violations could occur, including personal meetings taking place with fellow commissioners outside the room in which city business is discussed, someone hitting 'reply all' on an email to a majority of commission members, or being friends on Facebook, followed on Twitter, or 'linked in' with a quorum of commission members and official business is discussed, posted, or opined about. Nason advised that if a commissioner has a public social media account in which anyone can access it, and no one is blocked, it would not in and of itself violate the Open Meeting Law. Penalties for Open Meeting Law violations include a fine, removal from office, and public humiliation.

Meetings

Commissioner Niemioja asked if the Chair had the authority to close the public hearing and keep it

closed should someone ask to have it reopened.

Nason replied in the affirmative, stating it was within the Chair's purview to choose whether to reopen the public hearing or have it remain closed. She added that the Chair can also choose whether to allow someone to speak on an issue not on the agenda and can redirect the discussion or call for a motion when issues are getting belabored.

Nason advised commissioners not to get caught in the weeds or focus on things outside their scope. They should also avoid looking up additional information on the internet.

Data Practices Act

Nason advised that all information received, created or disseminated to the Planning Commission is public, including emails.

Commissioner Niemioja noted that Planning Commissioners used their personal email accounts and asked if it would be an overreach to go into their private emails.

Nason replied that any data that is maintained by the government entity is government data.

Commissioner Simon asked if the meeting packets were considered public government data.

Nason replied in the affirmative, stating they would be public government data.

Chair Maggi noted that periodically developers have reached out to commissioners individually prior to the public hearing.

Nason discouraged commissioners from meeting individually with applicants as all information should come from the City so that all commissioners have the same information. Commissioners should ask the applicant to instead send the information to staff so they can send it to all commissioners.

Conflicts of Interest

Nason advised that commissioners must abstain from voting if they have a direct or indirect personal or financial interest in any matter upon which they can make a decision. If you have a conflict you should disclose the conflict, recuse yourself from the discussion or vote, and leave the room during the discussion and vote.

Chair Maggi asked Nason to clarify non-financial conflicts of interest.

Nason replied the two categories of non-financial situations include an advocacy role in which a commissioner may have made up their mind prior to coming to the meeting, and 2) a relationship with the applicant which could have the appearance of impropriety.

Commissioner Lissarrague asked what the Chair should do if a commissioner does not want to leave the room but others see a conflict of interest.

Nason replied that Commissioners would not be thrown out, but it would be best to leave the room as it could result in a voidable decision. Any interested party has the option to appeal certain types of decisions to district court. Any commissioner that acts as an applicant could stay through the presentation but should leave the room during the vote.

Commissioner Robertson asked if a commissioner who was an applicant would be free to advocate for themselves at the Council meeting.

Nason replied in the affirmative, stating being a commissioner does not exclude you from seeking land use approvals.

Chair Maggi asked how to respond to neighbors, etc. seeking guidance on land use requests.

Nason replied that commissioners can provide general guidance but should then advise that they sit on the Planning Commission and should not have any further discussion about the request.

Nason advised that commissioners may abstain from voting in other circumstances; however, it may impact the decision significantly. If you feel you don't have enough information to vote it is best to continue the hearing to try to get the additional information needed.

Commissioners can attend Council meetings; however, they should clearly identify if they are speaking on behalf of the Planning Commission or as an individual resident.

Chair Maggi asked if City Council would be receiving this same information.

Ms. Rand replied in the affirmative.

Commissioner Weber asked if commissioners could voice their opinion about proposed ordinance amendments at City Council meetings.

Nason replied in the affirmative, stating no one loses their first amendment right by joining the Planning Commission. If it is not a quasi-judicial decision there is nothing legally prohibiting that; however, commissioners should identify that they are speaking on an individual level.

City officials cannot accept gifts from interested persons over \$5 in value.

Commissioner Trenzeluk asked if meeting in work sessions where there is a quorum would be excluded from the Open Meeting Law.

Nason replied they would not be excluded, and the meeting must be posted and open to the public.

Commissioner Trenzeluk asked if a meeting had to be noticed where there was less than a quorum.

Nason replied that meetings with less than a quorum are not considered a meeting and would not need to be noticed.

Committee Member Becker asked if the Housing Committee would fall under the same umbrella as city commissions with regard to the Open Meeting Law.

Nason replied in the affirmative, stating it was part of the overarching goal of transparency.

Commissioner Robertson noted that the current official newspaper was the *Pioneer Press*, which not everyone receives, and asked what the City's responsibility was around notification of upcoming meetings that are readily accessible without having to buy a paper.

Mr. Hunting replied that a public hearing notice is published in the City's official newspaper, a direct mailing is sent to property owners within the mailing radius, and it is posted on the City's website and information board in front of City Hall, all of which are free of charge.

Nason added that the meeting schedule is adopted each year and should be posted on the City's website where it is accessible to the public for free. Specific applications have a statutory process that must be followed regarding notification. The city must designate an official paper, and when the former newspaper went out of business unexpectedly it was determined there was only one option that met the legal requirements, the *Pioneer Press*.

Commissioner Robertson found it challenging that the official public notification is the *Pioneer Press* which has no free access except at the library.

Commissioner Niemioja stated the best option would be to come to City Hall.

Committee Member Becker asked if the gift law applied statewide.

Nason replied in the affirmative, stating that it applies to all public officials.

Many commission/committee members in the audience left as the remainder of the training was specific to the Planning Commission.

Nason explained the Municipal Planning Act and provided a diagram outlining where Planning Commission discretion lies. The least discretion lies in building permits and plan review, moderate discretion with specific land use applications such as variances or CUP's, and the most discretion lies in zoning ordinance and comprehensive plan policy decisions. The Planning Commission must respect the City's comprehensive plan, zoning ordinance, and subdivision ordinance when considering all applications, with the comprehensive plan taking priority over other rule books.

Commissioner Simon asked if the Planning Commission could still vote if the applicant does not attend the public hearing.

Nason replied in the affirmative, stating they also had the option to continue the hearing if they had questions they would like answered. The City has the right to extend the 60-day deadline if needed.

Nason advised that the public hearing is important because it gives people an opportunity to present their case when there is a property interest at stake. It is important for Commissioners to articulate the basis for their decision. Examples of valid findings of fact for approving applications include comprehensive plan consistency, no negative impact to surrounding properties, and having a practical difficulty in the case of a variance. Examples of findings of fact that are not valid for approving applications include such things as the new use will increase property taxes, the owner cannot sell their property with the current zoning, the required building materials are too expensive, etc. Examples of valid findings of fact for denying an application include such things as comprehensive plan inconsistency, the application would impede the orderly development and improvement of surrounding property, and lack of a practical difficulty. Findings of fact that are not valid for denying an application include such things as neighborhood opposition, not liking those types of businesses, and it is not the highest and best use of the property.

Commissioner Niemioja stated the Planning Commission has asked City Council for guidance regarding storage units as commissioners feel the number is getting out of hand. She asked how they should approach any upcoming requests for storage units if they do not receive the advice they are seeking from Council.

Nason replied that she wanted to be cautious about discussing that particular use at this time as there was a pending application. However, if commissioners are seeing a particular use or type of request it is appropriate for them to ask staff to request direction from Council.

Commissioner Niemioja asked if the Planning Commission could table the application until receiving guidance from City Council.

Nason replied they could not. They must process the application in front of them using the code that is in place at the time of application. She advised there is a pathway for recommendations to changes to the zoning ordinance.

Commissioners Niemioja and Robertson advised they would like to know the details of the formal process for recommending ordinance changes.

Committee Member Becker asked how definitive consistency with the comprehensive plan was regarding land use requests.

Nason replied that you cannot rezone a property to something that would be inconsistent with the comprehensive plan; a comprehensive plan amendment would have to be obtained and receive approval from the Metropolitan Council.

Committee Member Becker advised that in the past a development was denied because of pushback from the neighbors; however, it fit with the comprehensive plan guiding.

Committee Member T'Kach stated that unless it is a large parcel, the Metropolitan Council approves most comprehensive plan amendments. She asked what could strengthen the hand of the Planning Commission and City Council to more consistently deny requests due to inconsistency with the comprehensive plan.

Commissioner Scales responded that the comprehensive plan is reviewed and revised every ten years. It is a living breathing document that is more of a guide.

Chair Maggi advised that the Planning Commission has both denied and approved comprehensive plan changes.

Commissioner Robertson stated there were other variables that play into how they look at the comprehensive plan.

Commissioner Simon advised that they design the comprehensive plan to reflect how they would like the City to lay out; however, in reality it is sometimes not possible. When an applicant comes in, they discover that they are unable to achieve the recommended density because of soil conditions, topographical challenges, or other variables.

Commissioner Niemioja stated they should always fall back on the guiding principles of the comprehensive plan.

Commissioner Robertson stated one of the challenges is when an application meets all the criteria; however, there is a room full of neighbors in opposition of the request. It is her understanding that they must vote based on the valid criteria rather than resistance from the neighborhood.

Nason replied that it was hard for her to answer not knowing what type of application it was; however, it is important to base decisions on valid decision-making criteria. Most of the people in the audience being opposed to the request is not in and of itself grounds to deny a request. Making a policy decision would be somewhat different.

Nason acknowledged that most commissioners likely drive by the subject site, but she encouraged

them not to walk the site prior to the public hearing because then you are getting information that has not been shared with the rest of the group.

Chair Maggi asked if it would be okay for commissioners to drive by the subject site, stating City Council expects commissioners to visit the site.

Commissioner Niemioja noted that Commissioners are even given identification cards from the City to identify themselves when visiting subject properties.

Nason stated that from a legal perspective if you are going to do a site visit prior to a public hearing, the recommendation is not to do it with the developer as you would be receiving information that is not shared by the rest of the body that may factor into your decision.

Chair Maggi is fine with commissioners following the legal suggestion as long as there is consistency amongst our governing bodies and we are all in agreement on those rules.

Nason clarified that any information commissioners receive verbally is legally considered hearsay and if a person has something to say it should be said to the entire group at the public hearing or submitted in writing to become part of the record.

Nason advised that commissioners should not make up their mind prior to the public hearing and must be open to the evidence presented at the public hearing. Making up your mind before the evidence is presented at a public hearing is a violation of the applicant's right to due process. She gave the definition of various land use terms and explained how the City enforces conditions that were approved as part of a planning application, including jail, fine, and revocation.

Chair Maggi stated commissioners seem to have the most difficulty with variances, mostly because practical difficulties are subjective. She asked if City Council had the same requirement to define a practical difficulty for a variance as the Planning Commission does.

Commissioner Weber stated another question around variances is that the Planning Commission seems to have a different understanding of what can be considered a valid practical difficulty than Council does.

Nason stated that the test for whether a variance can be approved is the practical difficulty test. It is the same test applied by Planning Commission as is applied by City Council.

Chair Maggi stated but in practice the Council may be defining it differently than the Planning Commission.

Commissioner Scales advised that the difficulty is that many practical difficulties are subjective. In his opinion the bigger issue regarding variances is that the same variance requests are constantly being requested for accessory building size, number of buildings allowed, and impervious surface; therefore, the commission has asked Council to consider revisiting these codes.

Chair Maggi asked Nason to address the issue of denial of a variance by the Planning Commission based on lack of a practical difficulty, but in many cases they are then approved by City Council.

Nason replied that she could not address the issue as she did not have all the information; however, both the Planning Commission and the City Council are given all the information and are expected to make a recommendation based on that information and meeting the requirements for practical difficulties.

Commissioner Niemioja asked if Council had the discretion to ignore the practical difficulty criteria for a variance.

Nason replied that a variance may be granted where a practical difficulty as defined by statute exists. It is not required; it is a discretionary action meaning even if you had a practical difficulty it could be denied. Even though it is a may, councils typically approve variances where a practical difficulty has been established.

Commissioner Robertson stated one of the challenges we have is knowing exactly what constitutes a practical difficulty.

Commissioner Scales advised that we all have different points of view and that is why it takes a quorum to approve a motion.

Commissioner Robertson suggested they have a refresher course specifically on practical difficulties for variances.

Nason advised that in a case where a landowner purchases property knowing it will need a variance, since the physical characteristics of the property were not created by the landowner, they can still meet the unique circumstances test. If you are constantly granting variances for the same thing, it should be brought up to staff as perhaps needing to be reviewed and/or revised. Conditions can be added to variances but must be related to the specific variance itself. Precedent only applies if they are similarly situated in facts and time, which is difficult because each situation is so different. Precedent only applies if it is really the exact same situation. An error by city staff does not entitle a person to a variance. Use variances are not allowed.

OTHER BUSINESS

After a discussion of when officer elections should take place, it was determined they would be held in June after the commissioner appointments had taken place.

Motion by Commissioner Weber, second by Commissioner Lissarrague, to hold Planning Commission officer elections in June.

Motion carried (9/0).

The meeting was unanimously adjourned at 8:58 p.m.

Respectfully submitted,

Kim Fox
Recording Secretary