

City of Moline

Plan Commission

Wednesday, May 13, 2020
4:00 p.m.

The Plan Commission Meeting will be held remotely.

Members of the public can participate in three ways:

1. Join the meeting by audio by dialing the phone number for your area shown below. The Meeting ID required is also listed below.
2. Join the meeting by video, by using the web link listed below.
3. You may also send an email comment to fschultz@moline.il.us. Emailed comments will be read during public comments. Deadline to submit comments is May 13, 2020 at 3:30 p.m.

US: +1(720)9027700 (US Central)

+1(773)2319226 (US North)

+1(469)4450100 (US South)

+1(470)8692200 (US East)

+1(623)4049000 (US West)

International numbers available: <https://meetings.ringcentral.com/teleconference>

Web Link: <https://meetings.ringcentral.com/j/1490371017>

Meeting ID: 149 037 1017

AGENDA

1. Call to Order
2. Approval of minutes
3. New Business
 - a. COVID-19 Public Hearing Rules and Procedure
 - b. Future Business and COVID-19
4. Old Business
 - a. Update on 2020 City Council Goals for Plan Commission
5. Public Comment
6. Adjourn

Any person with disabilities who wishes to attend the meeting who requires a special accommodation or any other person requiring a special accommodation in attending the meeting should notify Chris Mathias, Department of Community & Economic Development, 524-2030.

PLAN COMMISSION

MINUTES

Wednesday, April 22, 2020

Present: Bill Fitzsimmons, Jeff Nelson, Victoria Graves, John Wetzel, Butch Trevor, Ashley Pankey, Craig Mack, Dennis Kelly, Cindy Wermuth

Absent: Peter McDermott, Mike Crotty

Staff: Jeff Anderson, Chris Mathias

Others: None

1. Call to Order

Chairman Fitzsimmons called the meeting to order at 4:00 p.m.

2. Approval of Minutes

Motion made by Commissioner Wetzel; seconded by Commissioner Mack, to approve the minutes from March 11, 2020. Motion carried unanimously.

3. New Business

a. Future Business and COVID-19

Mr. Mathias gave an update to the Commission on what will be coming up for future meetings. He explained the rezoning at the former Kmart building will be coming back to the Plan Commission. Council rejected the B-4 zoning proposal but they would like the Plan Commission to consider a Planned Unit Development (PUD). The applicant has not yet provided a new application for a PUD. The Commission and Mathias discussed their opinions on the PUD containing: no outside storage, a formal landscaping plan, modes of transportation connections, the building itself, building materials and incorporation of the Avenue of the Cities Corridor Plan. Mr. Mathias also stated there is a 20-foot setback on parking for the lot so current trucks parked there may need to move.

Mr. Mathias brought up that City Council would like the Plan Commission to hold a public hearing for the moratorium on storage at the end of May.

Mr. Mathias and the Commission discussed the COVID-19 public hearing rules of procedures. Chairman Fitzsimmons explained to the Commission his concerns in going over the guidance received from the Legal Department on the COVID-19 public hearing rules of procedures. Mr. Mathias stated that he was directed to only have public hearings if necessary.

4. Old Business

a. 2020 City Council Goals for Plan Commission Discussion

Chairman Fitzsimmons explained Plan Commission's top three goals from the City Council's 2020 Goal List. Mr. Mathias gave an update on where he is at on the top three goals and wanted feedback from the Commission on any other direction.

- i. A public hearing will be needed for an ordinance that prohibits chain link and wire fences in the front yard. Fences will need a zoning permit but there will be no fee for it. The Commission discussed the definition of front yard and ways to get this new fence information out to public.
- ii. Mr. Mathias explained he needs to pick up the noise equipment from City Hall, call the company to see how to use the equipment properly and then practice using the equipment before he would be comfortable coming back to the Commission with an ordinance. The Commission discussed the legality of enforcing a noise ordinance.
- iii. Mr. Mathias explained he will get in contact with the City's Corporate Counsel in regards to the sign ordinance and direction that was intended. He also asked for direction from the Commission. Chairman Fitzsimmons explained the Commission wanted to focus on the ordinance for banners, temporary signs and clearing up any ordinance confusion. The Commission asked for the sign ordinance to be emailed to them so they can look over it for weaknesses. The Commission discussed enforcement of temporary signs, advertising on trailers and vehicles and sign permits.

5. Public Comment

Chairman Fitzsimmons asked for an update from Mr. Anderson on the application to the Illinois Department of Transportation (IDOT) for funding on form based code. Mr. Anderson explained he has had minimal contact from IDOT due to COVID-19 but wanted to note Commissioner Nelson's positive impact in discussion with IDOT. Mr. Anderson updated the Commission on the Bike Path Grant application with the Illinois Department of Natural Resources (IDNR). He does not know when IDOT or IDNR will respond to the applications. He also reported the City's cost cutting measures due to COVID-19. Funds for form based code are up for rescission but Mr. Anderson requested \$40,000 be kept for form based code. Commissioner Nelson reported IDOT is working from home and he is optimistic they will move through the applications before the end of June.

6. Adjourn

Chairman Fitzsimmons adjourned the meeting at 4:50 p.m.

Respectfully submitted,
Fawn Schultz, Community & Economic Development Administrative Assistant
Recording Secretary



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Divisions

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Community Development
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Economic Development
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Land Development
524-2050

MEMORANDUM

TO: Plan Commission
FROM: Christopher Mathias, AICP
SUBJECT: COVID-19 Public Hearing Rules of Procedure
DATE: May 8th, 2020

Dear Plan Commissioners:

I have consulted with Chairman Fitzsimmons and we will have our regularly scheduled meeting of the Plan Commission on May 13th at 4 pm by teleconference only.

COVID-19 Public Hearing Rules of Procedure:

Please look over the attached Rules of Procedure for public hearings during COVID-19. Staff are proposing that the Plan Commission adopt these rules by resolution at the May 13th meeting to govern our public hearings during this health crisis. If the Plan Commission chooses to adopt these rules, we must make sure that all participants in the upcoming public hearings strictly follow the rules.

We will spend time during the May 13th meeting going through these procedures in depth. We will also discuss other important topics for the upcoming public hearings. To ensure proper social distancing and public participation we will have to change our normal routine when there is an actual public hearing. Our main meeting room for public hearings will be the Committee of the Whole, instead of the Council Chambers. We will reserve the Council Chambers as an extra holding/listening room for any concerned residents that show up to the live public hearing (instead of joining via the internet or phone). The reason we will need at least two rooms is that we can only have 10 people max to a meeting room and we will have to keep proper social distance.

Thank you for your continued service to the Plan Commission. If you have any concerns or questions to address before the meeting on Wednesday feel free to contact me at 309 524 2036 or cmathias@moline.il.us.

MODEL COVID-19 PUBLIC HEARING RULES OF PROCEDURE

These Rules of Procedure are designed to ensure a fair and thorough public hearing process during the COVID-19 pandemic consistent, as much as possible, with constitutional due process requirements as established in Sec. 11-13-25(b) of the Illinois Municipal Code, 65 ILCS 5/11-13-25(b).

These rules should be considered the general parameters governing zoning public hearings while the Governor's emergency orders addressing limiting public assemblies, promoting social distancing, and relaxing quorum provisions of the Open Meetings Act, 5 ILCS 120/1 *et seq.*, are in place. These Rules of Procedure apply to all public hearing participants who, for the purposes of these Rules of Procedure, are the petitioner, objectors, witnesses, and attorneys representing the petitioner, objector(s), and any witnesses. All such participants are expected to conduct themselves according to these rules and in a respectful and professional manner. Failure to abide by these rules for in person or remote participation participants may result in removal from the public hearing.

While the Plan Commission has the authority, if it deems necessary, to temporarily waive, suspend, or otherwise adjust these Rules as circumstances warrant, failure by any participant in the public hearing process to follow these Rules of Procedure, as may be adjusted by the Plan Commission may result in removal from the public hearing by the Chair or designated Public Hearing Parliamentarian.

If you have not registered to provide comment, testimony, questions, or cross examination on a petition before the date of the public hearing, as invited in the public notice, or otherwise address the Plan Commission on any public hearing matter before it, and wish to do so, please obtain a registration form outside the public hearing room, fill the form out, and place it in the registration form box near the dais. If you are participating remotely, please email the Chair and Staff Liaison at the following email addresses to register your participation: **fshultz@moline.il.us**.

(As used in these Rules of Procedure, the word "Chair" will apply to the duly appointed Chair of the Commission or a duly appointed hearing officer presiding over the public hearing process.)¹

1. Introduction by the Chair.

The Chair will begin each public hearing by announcing the name of the petitioner and the relief requested. The Chair will explain these procedures for the conduct of the public hearing, explaining that they are temporary procedures designed to accommodate remote participation by members of the Plan Commission, City staff, and members of the public in accordance with Governor J.B. Pritzker's Executive Order No. 7, effective on March 16, 2020 and as extended to April 30, 2020 by Executive Order No. 18, effective on March 20, 2020, modifying the requirements of the Illinois Open Meetings Act, 5 ILCS 120/1 *et seq.*, enabling the City, and other units of local government, to conduct public business remotely, as well as Governor J.B. Pritzker's Executive Order No. 10, effective on March 20, 2020 as extended by Executive Order No. 18 to April 30, 2020, issuing "stay at home" orders. An oath will be administered to all persons intending to provide comment, testimony, questions, or cross examination during the

¹ This parenthetical paragraph simply accounts for the possibility that some public hearings may be overseen by an appointed public hearing officer under Section 11-13-14.1 of the Municipal Code, 65 ILCS 5/11-13-14.1.

course of the public hearing. Nothing said by attorneys representing any party will be considered evidence or testimony, unless the attorney's client is not present at the public hearing. The Chair will remind those people previously sworn under oath from a continued public hearing that they remain under oath. The Chair will also explain the following:

- The Chair will remind the public how they can participate remotely, and there should be a sign with the remote participation instructions, as well as a scrolling chyron on the live video feed and posted internet information with the remote participation instructions.
- The Chair will verify that the Petitioner has filed an unconditional agreement and consent to participate in a public hearing where Plan Commission members and other members of the public are participating remotely.
- At a minimum, the Chair should emphasize that remote participation requires a higher level of formality and that the following rules—in particular—will be strictly enforced:
 - No speaker may address the Plan Commission without first being recognized by the Chair;
 - Speakers, including City officials and staff, must identify themselves each time they address the Plan Commission or any other participant in the public hearing; and
 - Witnesses who are addressing plans or other documents should do so by plan or document title and page number.
- The Chair, or the Chair's designee should serve as a Parliamentarian to not only maintain order of proceedings during the course of the hearing, but monitor any internet based platforms for and to immediately cut off disruptive behavior like “zoom bombing” or other harassing behavior. In the event that the public hearing has to be postponed because of disruptive behavior, the Chair will announce a temporary recess, as necessary, until the disruptive party is removed from the public hearing.

2. City Staff's Summary of Petition.

City staff will summarize the basic facts of, and relief requested in, the petition. In the event that the hearing is continued from a previous date, staff will be asked to provide the original summary as well as provide any new, additional, or supplemental information.

3. Petitioner's Presentation.

The petitioner will present the petition with testimony of witnesses and other evidence. The Chair should clearly identify and accept into the public hearing record the submittals provided with the application by title, page numbers, and latest revision date, as well as any additional or supplemental information the applicant may have.

The Plan Commission should allow the petitioner to make this presentation without interruption, except for those questions allowed by the Chair that may be immediately necessary to aid the Plan Commission or the public in understanding a particular aspect of the presentation.

Petitioner's graphics and other information should be identified by document title and page number, and clearly broadcast on all visual media to allow people participating remotely to

clearly see and understand the materials. The Petitioner should also be as descriptive as possible for people participating telephonically, or those who may not be able to see the materials.

The Chair should ensure that the Petitioner has had ample opportunity to fairly present its application and, where there is a need for additional time or clarification, enable the Petitioner to ask for and continue the public hearing.

4. **Public Comment, Testimony, General Questions (Other Than Cross-Examination).**²

- **General.** At the start of the period for public comment, testimony, and general questions, the Chair will advise the public:
 1. of amount of time permitted for public testimony, comment, and general questions;
 2. remind all speakers to state their names before addressing the Plan Commission;
 3. to avoid repetitive comments, testimony, and general questions;
 4. to appoint only one person to speak on behalf of a group;
 5. that all information presented is under oath; and
 6. that people who registered on the Interested Parties Registry to provide public comment, testimony, and general questions will be called in order of appearance on the Registry, and then anyone else who has not registered but wishes to provide public comment, testimony, and general questions.

Each person will be permitted to speak one time only, unless the Chair determines that allowing a speaker to address the Plan Commission again will contribute new testimony or other evidence. Unless more time is deemed necessary by the Chair, all comments from the public will be limited to no more than five minutes per person.

- **Testimony, Evidence, and Questions.** Members of the public and their attorneys should address their comments, testimony, and general questions to the Plan Commission. Following the conclusion of all public participation, the Chair will direct the questions from the public to the petitioner or staff in an orderly and consolidated manner for response.

² This section establishes the rules for general comments, testimony, and questions and is distinguished from the rules for cross-examination. These rules should be straightforward and it must be clearly stated that they are not the rules for cross examination to avoid confusion among members of the public body and the general public. The distinction between general comments, testimony, and questions and cross-examination is further established in these rules by requiring that they be directed to the public body for later redirection to staff or the applicant.

5. Cross-Examination.³

In addition to asking general questions, the public and their attorneys will have right to cross-examine petitioners and petitioners' witnesses in accordance with the following:

- **Interested Parties' Registry Automatic Right.** People who registered on the Interested Parties Registry have an automatic right to cross-examine petitioners and petitioners' witnesses. People who qualify under this right should be prepared to elicit information that addresses these valuable property interests consistent with the rules for cross examination set forth below.⁴ The request must be made on forms, approved by the Community & Economic Development Department, and submitted to Fawn Schultz, Community & Economic Development Department Assistant, not less than three business days before the scheduled public hearing date. Requesters will be informed as to whether their right to cross-examine witnesses has been granted or denied within one day of the public hearing by the Chair, or his or her designee, and no such request will be unreasonably denied.
- **Petitioners' Automatic Right.** Petitioners have a right to cross-examine any witness offered in opposition to their petition.
- **General Public Qualified Right.** Any other party who has not registered on the Interested Parties Registry will be given an opportunity to cross examine witnesses after those who registered on the Interested Parties Registry, provided they can demonstrate to the satisfaction of the Chair that their cross examination will meet the requirement for cross examination below, and is not otherwise public comment, testimony, and general questions.

All members of the public and their attorneys conducting cross-examination are subject to the following:

- Parties wishing to cross-examine witnesses must tailor their cross-examination in accordance with the following:
 1. The matters that are subject to cross-examination are factual and not merely matters of taste or personal opinion;
 2. The cross-examination will help simplify otherwise complex issues before the; and

³ These rules govern the cross-examination process and create an automatic right and qualified right to cross examination based on whether or not a person received personal notice of the public hearing. The right to cross examination is well established under Illinois law (See E & E Hauling, Inc. v. County of Du Page, 77 Ill.App.3d 1017 (2d Dist. 1979) and Klaeren, supra.). Communities considering adopting rules or amending the rules they have need to give this section serious thought and consideration, because this is a highly technical and complex process and the better the rules governing cross examination are drafted, the easier everyone will understand how the cross examination process works.

⁴ The qualified right to cross examine witnesses requires a registration in advance of the public hearing. The purpose of requiring registration is to, among other things, understand the extent of potential community concern or opposition to a project, ensure that those who want to cross-examine witnesses understand the rules governing the cross-examination process, and to facilitate an orderly and efficient public hearing process.

3. The cross-examination relates to the factors to be considered by the Plan Commission in making its recommendation.⁵

- In all instances, the Chair may specify which issues are considered relevant to the factors the Plan Commission must use to make its recommendation and limit cross-examination accordingly. People wishing to cross-examine witnesses must be aware of the factors that guide the Plan Commission in its considerations of a given petition and must tailor their cross-examination to these factors. Failure to do so may result in disqualification from cross-examination.
- The Chair will determine whether a party conducting cross-examination is eliciting relevant information and may direct a cross-examiner to adjust his or her questioning accordingly. In addition, the Chair may restrict the scope of cross-examination to the testimony offered. Cross-examination designed to elicit extraneous, irrelevant, or repetitive testimony will be ruled out of order by the Chair and may result in disqualification of the person from further cross-examination of the witness.
- The Plan Commission acknowledges the rights of parties to cross-examine witnesses, but parties wishing to do so must accept that the Plan Commission is not a court of law and the normal rules of evidence that would otherwise exist in those settings are not applicable in the proceedings. In order for the Plan Commission to most effectively carry out its responsibilities, parties wishing to cross-examine witnesses must respect this fact and conduct themselves accordingly.
- Finally, parties wishing to cross-examine witnesses offered by a petitioner are expected to respect the right of the petitioner to a prompt and efficient process. The use of cross-examination that deviates from these rules will be viewed as an abuse of process and infringement on the right of a petitioner to a prompt and efficient process and result in immediate disqualification from further cross-examination or testimony.

6. Subpoena of Witnesses.

There is no automatic right to request the issuance of a subpoena for any witness.⁶ However, upon:

⁵ These rules require people wanting to cross-examine witnesses to tailor their cross examination to a reasonable scope of questioning. Cross-examination should be straight-forward and assist the public body in reaching its decision. Without appropriate tailoring, cross-examination can become tedious and irrelevant, confusing the applicant, the public, and the public body. A useful requirement is to require that those conducting cross-examination limit their questions to the factors required to be demonstrated to support the zoning relief. These factors, or standards, are listed in the zoning code sections dealing with the zoning relief in question (i.e. special uses, variations, text and map amendments).

⁶ Some attorneys have argued that the right to subpoena witnesses, currently limited under the zoning statutes (compare 65 ILCS 5/11-13-3(e) "The chairman...may...compel the attendance of witnesses" to 65 ILCS 5/11-13-7(a) "Zoning variation and special use applicants and property owners, as set forth in Section 11-13-7 of this Act [in municipalities of 500,000 or more population], shall have the following rights...to have subpoenas issued for persons to appear at board of appeals' hearings and for examination of documents"), extends to all municipalities based on the Appellate Court decision in Klaeren [citation omitted]. The Supreme Court declined to adopt the Appellate Court's decision in this regard, criticizing the Appellate Court, "the appellate majority too strictly relied on the Municipal Code for its resolution of this cause." Klaeren, 202 Ill.2d at 181. These rules follow the Supreme Court's decision, creating

1. a proper showing that the testimony to be elicited is relevant to the factors under consideration by the Plan Commission;
2. an allegation of some special interest beyond that of the general public, and
3. that the evidence to be elicited from the subpoenaed witness cannot be obtained through some other document or testimony,

the Chair may, in accordance with state law, compel the attendance of witnesses. Any person who satisfies the requirements for issuance of a subpoena will be completely responsible for presenting the witness before the Plan Commission, including, without limitation all costs, attorneys fees, and enforcement of the subpoena. In no event will subpoenas be issued to obtain documents or other non-testimonial evidence.

Failure of a subpoenaed witness to appear will not result in a delay of the proceedings before the ____.

7. Time for Non-Petitioner Presentation(s).

As a general rule, all other parties desiring to make a presentation will be collectively allowed an equal amount of time as was provided the petitioner for its full presentation. Multiple parties desiring to make presentations are expected to coordinate their efforts to maintain efficiency and the promptness of the proceedings and to stay within the general time parameters set forth herein. In addition, non-petitioner presenters should follow the general procedures to identify themselves, any affiliation they have with an organization interested in the application, and present all plans and other documents to the Chair by title, number of pages, and latest revision date for entry into the public hearing record. During the course of their presentation, the non-petitioner presenter should identify plans and documents by title and page numbers, and otherwise follow the procedures for the Petitioner set forth in Section 3 above.

8. Response by the Petitioner.

The Chair will allow the petitioner a reasonable time to respond to the public testimony and comments presented, but no more than half the time as was used by all other non-petitioners.

9. Questions by the Plan Commission.

The Plan Commission members may, after being recognized by the Chair, ask questions of any individual that may be necessary to clarify material presented or the relief requested. Members doing so should be recognized by the Chair, clearly state their name and clearly state who they are directing their questions to, as well as identify any plans or other documents by title and page number.

10. Plan Commission Discussion and Deliberation.

a qualified right for subpoena of witnesses only, and also incorporates the discretionary language of 65 ILCS 5/11-13-3(e) where the chairperson "may" compel the attendance of witnesses and that failure of a subpoenaed witness to appear will not delay the proceedings before the public body.

During the discussion, members of the may direct additional questions to the petitioner, witnesses for the petitioner, or members of the public who testified. Members doing so should be recognized by the Chair, clearly state their name and clearly state who they are directing their questions to, as well as identify any plans or other documents by title and page number. The petitioner, witnesses for the petitioner, or members of the public or their attorneys may not address the Plan Commission during this portion of the meeting without the consent of the Chair.

11. Action.

Based on the discussions, the Chair may: (a) request the petitioner, a member of the public, City Staff, and/or the City's Corporate Counsel to provide new or additional information and continue the hearing to a date certain; or (b) take action (vote) on the petition and make its recommendation to the City Council. A vote will close the public hearing.⁷

⁷ The closing of the public hearing upon a vote of the public body on the application provides flexibility to take additional testimony, in the discretion of the public body, up to the point of a vote on an application. An earlier vote to close the public hearing could result in the public body being required to reopen the public hearing, including requirements to publish and deliver new notice. Failure to follow these procedural requirements on the reopening of a public hearing could result in technical challenges to the public hearing process.