

PLAN COMMISSION/ZONING BOARD OF APPEALS
MINUTES
APRIL 28, 2011

The meeting was called to order by Village Planner Michele Stegall at 7:30 p.m. ZBA Members Chairman Rick Garrity and Plan Commissioners Craig Bromann, Linda Dykstra, Erik Ford, Jeff Girling, Heidi Lannen, Julie McCormick, Ray Whalen, Lyn Whiston and Chairman Julie Fullerton were present. ZBA Members Gregory Constantino, Barbara Fried, Ed Kolar, Mary Ozog, Dale SiligmueLLer and Mike Waterman were excused. Plan Commissioners Todd Buckton and Jay Strayer were excused. Also present were Building and Zoning Official Joe Kvpil and Recording Secretary Barbara Utterback.

Ms. Stegall provided information regarding this training opportunity by Pete Pointner, AIA, AICP, for the Zoning Board of Appeals and Plan Commission. She stated that the Architectural Review Commission had also received a similar type of training last night. Ms Stegall provided background information regarding Mr. Pointner and distributed to those present a copy of a book written by Mr. Pointner.

Mr. Pointner provided a presentation on planning principals, a copy of which is attached. He also stated that Ms. Stegall will give the Plan Commission and ZBA members a copy of a chart that was on the power point presentation. Commissioner Whiston asked if a commission is required to accept a highest and best use for a property. Mr. Pointner responded that that issue will arise if there is a change of use as well as, typically, a change of zoning, and he recommended listening to developer's arguments. In response to Commissioner Lannen, Mr. Pointer listed Chapters 1, 3, 6, and 7 from his book that would be particularly useful to Commission members. Mr. Kvpil asked where Glen Ellyn ranks in comparison to other Chicago suburbs regarding being receptive to developers. Mr. Pointner stated he did not have sufficient data to provide a ranking but felt that Glen Ellyn was most in competition with Wheaton, West Chicago and possibly Geneva.

There being no further business before the Plan Commission, the meeting was adjourned at 8:32 p.m.

Submitted by:

Barbara Utterback
Recording Secretary

Reviewed by:

Joe Kvpil
Building and Zoning Official

Thoughts on Issues for Plan Commission and ZBA Members

Glen Ellyn Civic Center
Thursday April 28, 2011

"Pete" Pointner
FAICP, ALA, IIE

Introductions

- Questions or issues you would like covered
- Back for reference and expansion of workshop content
- Focus of the workshop, issues and trade off;
- Ask questions at anytime

What is Good Development?

What are "Good" Projects?

- Consistent with current plans, goals and objectives
- Positive impact on the community
- Enhance nearby properties
- Economically viable
- Attractive design, quality construction
- Clean, timely construction process
- Sustainable maintenance costs

Common Perceptions

Plan Commissioners... of Developers

Common Perceptions of Developers by Municipal Officials?

- Not responsive to local objectives
- They want exceptions for higher density
- They want existing tax payers to bear the cost of their development
- Submittals are late, incomplete and inconsistent
- They do not live up to commitments
- Projects are often disappointing
- They are driven only by profit

Common Perceptions Developer... of Plan Commissions

Common Perceptions of Municipalities by Developers?

- Have no clearly stated objectives
- Arbitrary and capricious demands
- No single spokesperson
- Staff reviews are slow and nit picky
- Too much detail is required
- Municipalities are insensitive to costs and risks
- Rigid standards and fear of what is new
- Too responsive to citizen objections

Common Objectives Developer and Municipality

Common Objectives of the Municipality and Developer

- Speed up review and approval process
- Improve communication between the municipality, petitioner and public
- Enhance compatibility of recommendations (PC and ZBA with Board policies and actions)
- Better projects which are a community asset, a financial success, and compatible with adjacent land uses and support systems

How is Plan Review Connected to Economic Development?

When the economy turns around, where will good developers go?

- The role of the market place
- The influence of competition
- The impact of reputation
- The importance of a plan, policies and ordinances – current, consistent, fair

The Job of the Planning Commission

ILLINOIS PLANNING AND ZONING STATUTES

65 ILCS 5 – 11- 12- 4 (Chapter 65, Art 5, Article 11, Division 12-4)

- Power to create a plan commission and planning department

65 ILCS 5 – 11- 12 – 5 Plan commission, planning department

- Recommend to corporate authorities
- Adopt in whole or functional parts
- Initiation
- Promote the realization of the plan

Roles of the Plan Commission & ZBA

10-10-3: Plan Commission

10-10-4 ZBA

Plan Commission

- Amendments
- Special Use Permits and Variations
- Special Use Permits for Planned Unit Developments
- Zoning requests for newly annexed property
- Plats of subdivision
- Special Use Permits and Variations for Flood Hazard Regulations and Stormwater Variations

Roles of the Plan Commission & ZBA

10-10-3: Plan Commission

10-10-4 ZBA

Zoning Board of Appeals

- Zoning Variations for single-family and two-family dwellings
- To hear and decide Appeals
- To hear and decide all matters referred to it by the Village Board

Variations



Variations

65 ILCS 5 – 11- 13 – 5 Variations

- "Practical difficulties or particular hardship"



10-10-12: VARIATIONS (1 of 5)
 Glen Ellyn Zoning Ordinance

Shall not vary provisions except where there are *practical difficulties or particular hardship* and, findings based upon the evidence in the following cases

- Property cannot yield a reasonable return if permitted to be used only under the conditions allowed and that the Variation will not alter the essential character of the locality or
- That the plight of the owner is due to unique circumstances and that the Variation will not alter the essential character of the locality

10-10-12: VARIATIONS (2 of 5)

In making a recommendation that there are *practical difficulties or particular hardships*, take into consideration the extent to which the evidence establishes the following facts

- The physical surroundings, particular hardship as distinguished from a mere inconvenience
- Conditions upon which the petition is based would not be applicable generally to other property within the same zoning district

10-10-12: VARIATIONS (3 of 5)

- Petition...not based exclusively upon a desire to make more money
- Difficulty or particular hardship has not been created by any person presently having an interest in the property or by the applicant
- Granting will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood

10-10-12: VARIATIONS (4 of 5)

Variation will not

- Impair light and air to adjacent property
- Substantially increase the hazard from fire or other dangers
- Otherwise impair the public health, safety, comfort, morals or general welfare of the inhabitants of the Village
- Diminish or impair property values within the neighborhood
- Unduly increase traffic congestion

10-10-12: VARIATIONS (5 of 5)

- Create a nuisance or
- Result in an increase in public expenditures

That the Variation is the minimum Variation that will make possible the reasonable use of the land, building or structure

VARIATIONS HARDSHIP?

- My family has outgrown our house and I can only expand into the minimum yard
- I can put on an addition without any variances but it will take down a 150 year old oak in good condition
- I can't get my money out of the property unless I can expand it into the minimum yard
- My residential property is better suited for commercial use, I need a use variation

VARIATIONS CASE STUDY 1



VARIATIONS CASE STUDY 2



VARIATIONS CASE STUDY 3



Process

65 ILCS 5 – 11- 13 – 7A *Rights of applicants, property owners*

- Present and cross exam witnesses
- *Klaetzer vs. Village of Lisle, right of cross exam*

65 ILCS 5 – 11- 13 – 10 *ZBA vote*

- Negative vote requires 2/3 vote of elected body to approve

65 ILCS 5 – 11- 13 – 18 *All testimony under oath*

Special Uses

65 ILCS 5 – 11- 13 – 1.1 *Special uses*

- Planned Unit Developments are a special use
- "Unique, special or unusual impact on neighboring property, and planned developments"
- "Subject to conditions reasonably necessary" to meet standards established for the zoning classification
- Negative recommendation requires majority vote of elected officials to pass, they may require 2/3" vote
- *Chicago Heights vs. Living Word*

10-10-14: SPECIAL USES (1 of 5)

Zoning districts...essentially uniform...certain uses, because of their unique character cannot be properly classified in any particular district without consideration in each case of the impact of those uses upon the neighboring lands and upon the public need for the particular use at the particular location.

Such uses fall into two (2) categories:

10-10-14: SPECIAL USES (2 of 5)

1. Uses operated by a public agency or utility...review shall not be based on determining the necessity for the use but for assessing the impact upon neighboring lands, Village's streets and utilities (priority, expedited review)
2. Uses entirely private in character, but operation may give rise to unique problems with respect to impact upon neighboring property, public facilities, the Village or the natural environment

Shall not recommend a Special Use unless it shall find, based upon the evidence presented that the Special Use ...

10-10-14: SPECIAL USES (3 of 5)

- Is harmonious with the Comprehensive Plan and Zoning Code;
- Is designed, constructed, operated, and maintained to be harmonious with existing or intended character of the general vicinity;
- Will not be hazardous or disturbing to existing or future neighborhood uses;
- Can be served adequately by public facilities and services and that the agencies responsible shall be able to provide adequately such services;
- Will not create excessive additional requirements of public cost or be detrimental to the economic welfare of the Village.

10-10-14: SPECIAL USES (4 of 5)

- Will not involve uses, activities, processes, materials, equipment or operations that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors
- Will have vehicular approaches designed as not to create an undue interference with traffic on surrounding public streets
- Will not increase the potential for flood damage to adjacent property or require additional public expense for flood protection
- Will not result in destruction, loss or damage of natural, scenic or historic features of major importance to the community

10-10-14: SPECIAL USES (5 of 5)

The Plan Commission may require such conditions and restrictions upon the premises benefited as may be necessary to comply with the standards set and to reduce or minimize injurious effect upon other property in the neighborhood

Thoughts:

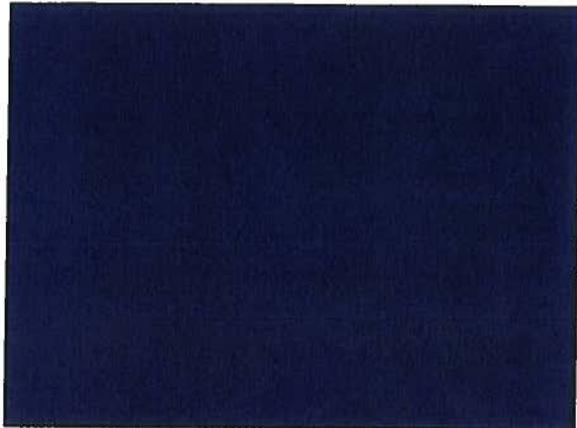
Based On Supreme Court Decisions in Illinois:

- Defer to the City Attorney on all legal questions
- Modify hearing procedures to permit cross-examination
- Carefully craft findings of fact relating decision to criteria and facts
- Don't list a use as a special use unless you are willing to accept it in a zoning district

Planned Developments

- Deviations vs variations
- Evaluating Trade-Offs
- Special Use





Court Cases

City of Chicago Heights v. Living Word Outreach Full Gospel Church & Ministries, Inc., 196 Ill. 2d 1 (2001)

- Special use permit review, legislative action, more difficult to challenge municipal decision
- Note: legislative versus quasi-judicial, ie administratively

Court Cases

LaSalle National Bank v. County of Cook, 12 Ill. 2d 40, 145 N.E.2d 65 (1957)

- Courts will not interfere with legislative acts unless shown to be arbitrary, capricious or unrelated to the public health, safety and morals

Court Cases

People ex rel. Klaeren v. Village of Lisle, 202 Ill. 2d 164 (2002)

- Decisions by municipal government on special use permits are quasi-judicial, not legislative
- Parties interested in such proceedings cannot be denied the right to present evidence and cross-examine witnesses appearing at public hearings