

CITY OF GRACE
PLANNING & ZONING COMMISSION
SPECIAL MEETING AND REGULAR MEETING
HELD ON SEPTEMBER 20, 2016

PRESENT: Chairman Randy Nelson
Commission Members: Don McLain, Sadie Sant, Angelyn Smith, David Pristupa
Zoning Clerk: Loy Raye Phillips

OTHERS PRESENT: Jim McNall, ICRMP, Kim Welch
Mayor Jackie Barthlome,
City Councilmembers: Mike Ridenour, David Sotutu,
City Superintendent: Wayne Bredehoft

Chairman Nelson called the special meeting held on September 20, 2016 to order at 7:00 p.m. turning the meeting over to Jim McNall from ICRMP for training.

Mr. McNall stated that he would be discussing basic Open Meeting Law process and the types of hearings and answer any questions their might be.

Mr. McNall discussed how a meeting would function with a hearing. The hearing is a little matter that occurs at a meeting. You can have multiple hearings during the meeting and is one item on the agenda. The hearing can be done at any time during the meeting. Statute #74 Chapter 2 deals with compliance of meetings. Planning & Zoning comes under statute # 67 Chapter 5 which deals with land use matters. There are other types of hearings that deal with different sets of rules and statutes. Decisions are always made in the meeting you don't make decisions at a hearing. Hearing must be closed before you make your decision.

Meetings are a spectator sport the public has a right to listen to the Commission conduct business they have no right to participate. At a hearing the public has a right to speak as long as they speak within the rules of the hearing (speak on the topic).

Violation of an open meeting law rule, regulation or law is by deliberating with or talking to other governing board member other than at a meeting. You can violate the open meeting law on Quasi-judicial by talking to any citizen. That makes it very difficult for the Planning & Zoning. There are two kinds of hearings dealing with Open Meeting Law. One is Legislative the other is Quazi-Judicial. At a public meeting the Citizen has a right to sit and listen. Violation can occur talking to another citizen or a family member.

Meeting notices are complicated especially for Planning & Zoning hearing because you provide notice to papers, and posting. This Planning and Zoning Commission has been opening the Variance hearing first, you are still in a meeting. The hearing is the first item on the agenda, then close the hearing and then you make the decision. The hearing occurred at the meeting and it does not matter where you do the other business of the agenda.

The Planning & Zoning Commission has statutory duties less flexibility to do anything else. To reach public agreements, explain why you can and cannot do things or at a hearing when you need too. Sometimes this is a tough question and you can pass this off to the City Council.

Meeting Rules: Limits how much time a citizen is allowed to speak. Discussion had on three (3) minutes, taking testimony only on the issue that is before the Commission and if someone comes to you and wants to see the Comprehensive Plan or a Zoning Map changed that is something that can be dealt with at the meeting but if it is about a specific application you cannot allow the change. If a Citizen comes with an item have it submitted in writing thank them for bringing this to the Commissions attention then put it on the agenda for the next meeting.

Role of Chairman: The Chairman conducts the meeting but retains the right of obligations to discuss and vote. Chairman is a full participating member. Mayors are not members of the Council, Mayors conducts Council meetings but is not a member. All other board Chairman's are full participating members and can vote only once (do not get to break the tie). The Chairman controls the public input, keeping people in line talking on the subject being discussed. Recognize both public and members to speak. Chairman helps balance the meeting by encouraging those who do not say much to give an opinion because they have something to say which is important. Keep discussion on the agenda and prohibits personal attacks from people who do not like decisions who always try to make it personal. The decision is not personal.

The Rules: Basic rule is that all public business should not be conducted in secret.

The Policy	The Rules
All meetings shall be open	Open to the Public
No decision should be made by secret ballot	Governing board:
	(1) Elected
	(2) Appointed staff
No meeting shall be held where discrimination is practiced	(3) Advisory Committee
	(4) Sub Committee
Understanding the definitions of the Statues is important	(5) Study groups
Deliberation is most often misunderstood	(6) Decisions of committee's need to apply to the open meeting law
Deliberation is a receiver or exchange of information or opinion	

It is not a good idea for two of the members of the board to discuss business and then one of those run into another board member and want to share what was discussed the day before which then involves three members of the board and may become a violation of the open meeting law so be careful.

Hearing notices are much more elaborate

Meeting Notices: Regular meeting notice is posted five days (5) before your meeting. Your meetings are set for the year. The Planning & Zoning Commissions are scheduled for nine meetings (9) a year. Unless something is pressing and there are the required 15 days the Commission can hold the hearing and a meeting but it must be posted. Variances need to be noticed fifteen days (15) before. Variance hearing notice must be posted with the mailing notice. All applications should be completely done and turned in on time.

The Planning & Zoning Commission can hold Emergency meetings without advanced notice which will probably never happen. More for the City Council emergency meetings deal with natural disasters and regular maintainance of the City equipment.

Agenda: Posted the same as a meeting notice and with a hearing notice. Requirement is at least 48 hours or 24 hours or 2 business days. Amending the agenda with a good faith amendment has to be a motion, voted on and passed by the Commission. If you are going to add something to the agenda it should meet the criteria of three (3) things:

1. No one knew about it 48 hours ago.
2. Something that really needs to be done at this meeting.
3. Should not be of general public concern thing.

A motion is needed as well as a second and a vote is required to amend the agenda. Someone who understands should be able to read the agenda. It should be in English real words so the public who doesn't know about your business should be able to read the agenda and know what business is being done. Arrange the agenda in a manner that works for the Commission. Hold your hearing first and then do the business as scheduled.

Minutes should be available to the public within a reasonable time. Minutes only need to contain three things: Which members of the governing board were in attendance, any final decisions made, ordinances, motions, pretty much specific, motion passed; however in the statutes it allows for any member to call for a roll call vote. If a roll call vote is called you do so. The only other time you would need a roll call vote would be if you are going into executive session which is very rare. Minutes should have a history of the meeting so that in twenty years (20) people will know what was done and why. Minutes should be approved with a motion.

It is important to know why you approve the minutes. It is a chance to review what is written, what was done and why. Not an opportunity to change what the Commission wished would have happened.

Motions: What do you need a motion for? A motion is needed for any decision or recommendation that the Commission makes. When the Planning & Zoning Commission approves a Variance does the City Council need to approve the Variance? This depends on what the City Ordinance states. The statute doesn't require it. Statue allows the Planning & Zoning Commission to approve Variances and Conditional Use Permits and then take to the City. Does the Superintendent sign the Setting Permits that are with the Variance? A variance is just one term of the facts that deal with the Setting Permits so that it meets the requirements. What does the City Ordinance say regarding how it works? Who is responsible to check out the Variance? The Citizen may build it the way they want instead of how the Variance states. Who checks to see if the structure is being built as approved? Does the Planning & Zoning Commission go out and check this out? The Planning & Zoning Commission does not go out and inspect the Variance the City does all the checking to make sure it is in compliance. If you see someone putting in forms for a foundation and you know it is not where it is should be; it is best to let the City Staff know before the cement gets poured.

Variances are signed by the Chairman of the Planning & Zoning Commission and the Mayor. Superintendent Bredehoft looks at the Variance noting a fifteen foot (15') setback which he needs to know. Superintendent Bredehoft still signs the Setting Permits. The Superintendent knows where all the lot lines, water lines and sewer lines run. These things are important. You do not want Citizens building over the City's infrastructure. You probably don't want them to put a building over their own infrastructure. They can build over their own infrastructure if you do not have an Ordinance. However

provide in writing that they are doing this have them sign a written statement that they were made aware of the problem of building over their own infrastructure.

Executive Session: Planning & Zoning would use an executive session very seldom. Example someone sued the City for a decision the Planning & Zoning Commission had made. An attorney wanted to talk to the Commission about it. It requires a 2/3 majority so it would require four (4) of the Commission to be here. The Attorney General states it is 2/3 of full governing board when in executive session. If you feel you have violated the open meeting law go back and redo it. Take it serious it provides protection for the decision made and for you financially. Final action must be made in opening meeting.

Hearings: Two types of hearings Legislative and Quazi-Judicial. Legislative is when you change rules of a general nature for example if you were going to amend an Ordinance. Legislative hearings require notice which is a published notice. Decision of the Planning & Zoning Commission is final. Conditional Use Permits and Variances would be a legislative hearing. It is an open meeting and can be discussed with people, you can lobby people, just not talk to other Commission Members about the application. Citizens can talk to you and you can talk to them getting input. At the Legislative hearing you can take all kinds of comments.

A Quazi-Judicial hearing the Planning & Zoning Commission are held to ex-parte standards that the Judges are held too. Quazi-Judicial deals with the specific rights of an individual or individuals. Each time you get an application it deals with a specific application. Quazi-Judicial requires due process with the right to present and rebut and it requires a notice. The hearing is part of the meeting. The exception is if you have a hearing officer a lot of larger Cities or Counties will appoint an Attorney to conduct a hearing and bring the information back to the Commission.

Introduction: Who are the participants? Explain nature of hearing even though a mailing was sent out. Describe what has to be considered.

Variance has two things you have to decide.

1. What about the lot that requires a Variance.
2. Will it impact the Public disproportionality.

Most Commissions only focus on one of these.

Talk about what is going on. The application was received on this date, notice was provided, and here is what information was received from other Agencies. Every public notice should go to the School District, Library District if they are in the same area as other property owners most of the time you will not have any response.

Legislative hearing is when you are considering Ordinances. This is an open format people can talk to you that is the basic difference between Quazi-Judicial and legislative. Quazi-Judicial is where someone has due process so they have a right to certain things. Comments should all come during the hearing or be written. No comment should be taken outside of the hearing. When someone starts to talk to you about an application as soon as you can stop them you tell them you value their opinion but I'm forbidden from taking testimony outside of the hearing please submit your information in writing or come to the hearing. Technically you are supposed to disclose any contact that you may have had with a Citizen. Family members are the hardest to control.

Quazi-Judicial hearings are hearings for a zone change. When you make a Zone Change you are amending your Ordinance every time. Conditional Use Permits and Variances if the ordinance is

amended can be decided by the Planning & Zoning Commission. It streamlines the process making it go faster. If you have very many Variances you probably need to look at your Ordinances. Variances should be very rare in a flat City in fact almost never because you probably do not have people who can meet the first qualification. Ordinance needs to reflect the site specific characteristic that creates the hardship (cliffs, hillsides, rock out cropping's, wash outs, etc). You have a relatively flat city you do not have the hardships that are site specific the hardships here are created by what has already been built. How much space do you need to properly maintain and have a safety cushion on the City streets?

Discussion was had on size of lots in the City being twenty five feet (25') and can you technically allow someone to build over a lot line. Lot capacity was discussed. In Commercial you would want one hundred percent (100%) covered. Discussion was had on what the City Council and the Planning and Zoning need to look into. Too many buildings in a residential area create a problem with runoff causing flooding. Discussion was had on the setbacks on the front of the property from the streets. Suggestion was made to have a joint City Council and Planning & Zoning staff meeting on what you are having Variances for and discuss changes needed. It doesn't make sense for the Planning and Zoning Commission to meet and then send it to the City Council. Discuss it first so you know what the problem is. If it is a Subdivision it is already platted sixty foot (60'). Discussion was had on making sure people are not building things on the City right of ways because that is a negative setback.

Subdivision: Discuss with someone with knowledge to decide if it would behoove the City to look at re-platting where you have a house covering three lots maybe it should be one lot which requires a re-plat this is a major undertaking should not jump into that. Sub divisions do not require a hearing in the statute but do need to be signed off by the City Council. Most generally the Commission would do a hearing for a re-plat if someone looks at their lots and decides to make one lot.

Required: Publish hearing, first class mailed notices, posted notice, keep records of what Commission has done, failed notice on mail delivered first class make an effort to find the individual can be done by calling the County and check the tax records asking if they are paying taxes it maybe a trust, another failed notice is when someone comes to the hearing stating that they did not get a notice, that is the best kind because they are at the hearing, explain the rules in the notice, site specific reason why the hearing is needed, and is it going to affect the public at large.

Quazi Judicial: (67-6535): Participants includes everyone, the applicant, neighbors, or anyone else who cares. All these individuals have a right to present and rebut evidence. Process includes the application, staff gathering basic information, written correspondence if received include it in the hearing, require written testimony be in a few days earlier than hearing, testimony by supporters (family members or supporters), comments by neutrals, opponent can speak the Commission is now hearing the negative side of application, and finally the applicants rebuttal. People must sign in indicating which they are representing. You can use an individual paper for each person to use then they check whether they are in favor, neutral, or opposed. Someone sorts while the applicant is presenting. Then the Chairman can call all who are in favor first and all who are neutral and those who are opposed.

Sometimes you will have an applicant who is not familiar with area and requirements; this is an opportunity for the applicant to rebut what was presented. It is not the opportunity to change the application. The applicant must rewrite the application and come back in thirty (30) days. It is only to rebut the information not to rewrite the application. Either proof or denial is what you are applying for. The exception of this would be a Conditional Use Permits where the Commission can look at a variety of things. Once you close the hearing only those at the table can speak no questions should be asked.

Questions should come before you close the hearing. Questions should be at the very beginning of the hearing. Decisions are based on the standards that the Commission is looking at regarding the application. Variances are always the changing of numbers. Decisions must be a written reason decision. Variance was approved because of these standards that it was judged on. Standards are very difficult to write for a Variance (existence of various buildings).

Conflict of interest: A relative in the second degree, an employer, an employee of the Commission Members do not participate. If A Commission Member steps down because of a conflict you still have a Quorum. One person can make a decision if everyone else has a conflict. Mayor can sign Setting Permits that may have a conflict of interest. Discussion held on a conflict of interest with Setting Permits in an employee's neighborhood. Employee can notify the Mayor prior to the process that he is going to testify and he cannot do the reviewing on the permit the same as for a City Councilmember. If you are going to speak you clear the conflict, speak and then get up and leave the table. A known violation is a misdemeanor. Failure to comply with the Open Meeting Law is a personal fine which the Commission Member or City Councilmember pay (IC 74-201, IC 74-207, IC 74-208).

Discussion was had on tiny homes or mother in law homes. Planners think they are a great idea because they use so few resources but most Zoning Ordinances do not allow them. If home comes in on wheels they are considered a mobile home but some are stick built. If they are brought in on wheels and then set they are considered a manufactured home. If your Ordinance does not have a size limit then they are allowed. A mother in law home is a secondary home set on a parcel. The home is usually on its own parcel of land as long as it meets the criteria. These homes are usually temporary for the period that the person is living in the home, with a time limit and stipulations can be in writing that you have to remove when they no longer live in the home. The City of Grace has a lot size requirement to build a home on and the percentage of lot coverage. This is something that could be addressed.

It is not required to have a motion to adjourn the meeting. If two of you get up and leave the meeting is adjourned. The Commission can continue to have the motion to adjourn. The Chairman has the power to adjourn the meeting do what is comfortable for the Commission. The Commission should very seldom amend the agenda.

Discussion was held on requesting the applicant to call dig line to have the sewer, gas, water lines marked and placed on their application. Even though they own the property it is still part of the system. The power company would care about their hook ups because they own up to the meter.

Chairman Nelson thanked Mr. McNall for coming and presenting the proper way to hold meetings and how to properly conduct business as a Commission.

Meeting Adjourned at 8:20 p.m.

Chairman Nelson called the regular meeting of the Planning & Zoning Commission to order at 8:25 p. m.

Chairman Nelson will hand in his resignation at the City Council meeting September 21, 2016 and introduced Kim Welch to the Commission as a new member to fill the vacancy that is coming up.

Chairman Nelson entertained a motion for nominations for Chairman of the Planning & Zoning Commission. Commission Member McLain nominated Dave Pristupa. Nomination was seconded by

Commission Member Sant. Chairman Nelson called for a vote to nominate Dave Pristupa as Chairman of the Planning & Zoning Commission after he turns in his resignation tomorrow at City Council meeting. Motion passed unanimously. Commission Member Sant will remain as Vice Chairman.

Discussion was had on changing the meeting day to the Fourth Thursday. The fourth Thursday of the month is a real bad day to hold meetings because you have holidays, trying to fill the required nine meetings a year and to accommodate the Citizens. The Commission could call special meetings if they were needed in the months of November or December. Chairman Nelson is going to ask the City Council for a Resolution to move the day from Wednesday to Thursday. Discussion was held on which Thursday of the month would be the best to hold the Planning & Zoning Commission meetings. The City Council meets are on the first Wednesday and the third Wednesday of the month the Planning & Zoning needs a buffer to get their business done and the second Thursday would be a better option.

Motion was made by Commission Member Pristupa to request from the City Council a Resolution to move the Planning & Zoning Commission meeting from the fourth week of the month to the second week of the month on Thursday. Motion was seconded by Commission Member Sant. Motion passed unanimously.

Discussion was held on when a Variance decision is made does the applicant have to leave or does the applicant stay. The Applicant has the right to be present. Discussion on a Commission Member voting No being disliked because of his/her vote. This Commission Member was paying attention and has the opportunity to vote, the member is only one vote. This vote is not necessarily personal. Discussion was held on temporary and permanent structures being placed at the convenience of the property owners.

Discussion was held on the Planning & Zoning Commission adjourning the meeting and going to look at a Variance application because there was some question to the legality of this. Generally if you are going to do that you need to provide notice, a recording of everything that is said by anybody when you go there, do not discuss it on the way to the property. It would be better not to go to the property to check it out, this would be under ex parte of the law on hearings, do not stop and discuss it with the neighbors, you live here and are aware of what is going on. Be very careful of how you do this and more careful of what you say about the application. The Planning & Zoning Commission should not go with Superintendent Bredehoft to look over the property. Superintendent Bredehoft should go alone and check on the application and come to the Planning & Zoning meeting to discuss any problem that is on the Variance. Discussing with staff is different than discussing with other members of the Commission out of meeting. A good question for the Chairman to ask would be if any of the Commission Members are related or have a conflict with applicant. This sends a message to the public that the Commission is concerned about conflicts.

Discussion was held on Home Owners Association and what the procedures for the Association as to permits and building. The Home Owners Association follows the City Ordinances, setbacks and the permit has to be approved by the Home Owners Association.

Discussion was held on curbs and gutters. Home owners are required to pay for the curb and gutter. If curb and gutters were offered would the property owners want to participate?

Discussion was had on several lots not having survey pins. Lot size was discussed and where some of the lots are measured from the center of the road or from the side walk some lots are larger than others. Discussion was had on there being no common lot size in the City.

Meeting adjourned at 9:00 p.m.

ZONING CLERK

APPROVED _____
CHAIRMAN

DATE _____