



# City of Aurora

2nd Floor Council  
Chambers  
44 E Downer Place  
Aurora, IL 60507

## Planning and Zoning Commission Meeting Minutes

Thursday  
August 12, 2021  
6:00 PM

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### CALL TO ORDER

*Chairman Pilmer called the meeting to order at 6:00 p.m.*

### ROLL CALL

*The following Commission members were present: Chairman Pilmer, Mrs. Anderson, Mr. Cameron, Mr. Chambers, Mr. Elsbree, Mr. Gonzales, Mrs. Owusu-Safo and Ms. Tidwell. Mr. Butler was absent.*

### OTHERS PRESENT

*The following staff members were present: Mr. Sieben, Mrs. Vacek, Mrs. Morgan, Mr. Broadwell, Mr. Sodaro, Mrs. Jackson and Marissa Spencer.*

*Others Present: None.*

### PUBLIC COMMENT

*Chairman Pilmer said if you are here for an item that does not appear on the agenda as a public hearing and you wish to speak to the Commission, we can give you 3 minutes to do so.*

*No one came forward.*

### AGENDA

[21-0622](#)

#### Planning and Zoning Commissioner Training

*Mr. Sieben said we wanted to do an update Planning and Zoning Commission training session. I know we had one about 2½ years ago from CMAP. I know that was a little long and I know we had an audience member, not one of you guys, but that fellow slept during that, so we are trying to avoid that. We are trying to keep this brief. We've also got Marissa Spencer here, our Assistant Corporation Council. You may know Marissa. I'll go ahead and get started. On the agenda, we've got a few different subsections. I'm going to start with the beginning and talk about the section on planning for the future, development regulations and city roles and then I'm going to turn it over to Tracey to kind of just briefly update you and then for the new members go over some of our types of applications and then finally turn it over to Marissa on*

some of the hearing procedures, weighing the evidence and findings of fact, which gets into the legal aspects of it, and then some ethics and conflict of interest and Open Meeting Act. One of the most important documents that we base a lot of our decisions on and the foundation of our decisions is the Comprehensive Plan. You've obviously heard us talk about that. The Comprehensive Plan was really first adopted by the city back in 1984. What it is, if you look at it, it is different colors. The colors kind of reflect the zoning districts of the city, but not exactly. It is broken up into districts of types of residential, types of commercial, industrial, open space, etc. That is really a vision for the city's future. We constantly update that. A little of the background of the Comprehensive Plan, it is a vision for the community's future, the authority established by the Municipal Code and the Illinois Constitution and it is a plan for the general future policy. Some of the typical topics in a Comprehensive Plan, besides the map, the map is obviously the main thing, but there is also background information. Obviously, land use is one of the main things, the environment, public facilities, private utilities, transportation, historic preservation, urban design, housing, economic development and sustainability are all different aspects of that.

Some of the steps to get to that point with the long-range planning, staff gathers and analyzes base of existing conditions data. There is a SWOT analysis, which stands for something which I can't remember at this point.

Mr. Chambers said it is Strengths, Weaknesses, Opportunities and Threats.

Mr. Sieben said there you go, so identify issues and opportunities, confirm community vision, that's a lot of public participation and open houses. From there we develop goals and objectives, prepare and evaluate plan options, select a preferred plan, adopt the plan, and implement actions in the plan. Then we monitor results annually and ideally update every 5 years. Then we also have subarea plans we've done, which I think we do mention here, correct Tracey?

Mrs. Vacek said I think so. Some of the long-range planning that you guys would probably see is some of the neighborhood plans. The last one that we did was the University Neighbors. That's when we went out and we did a lot of public meetings with them and we went over everything and then you guys saw the actual end plan of what the outcome was. Some of you may not have been here at the time, but that's the most recent long-range plans that we did.

Mr. Sieben said well the Route 59 Corridor Study.

Mrs. Vacek said but that's the Comprehensive Plan. The Comp Plan that you most recently saw was the Wolf's Crossing Subplan and right before that was the Route 59 Corridor Plan. Some other long-range planning that we have is like our Downtown Master Plan, our River Vision Plan, so those are all plans that we actually are hoping to update in the near future, as they haven't been updated in a while. You'll start kind of seeing some of those come before you too.

Mr. Sieben said regulating development. One of the purposes of the Zoning Ordinance is to really regulate a development to protect the health, safety and welfare of the community, community character and economic development objectives, make sure that the codes are applied consistently, that we have a predictable fair and timely process. You may hear us occasionally, we work on our processes to make it fair for everyone involved, the public and the developer. Some of our regulatory tools beside the Zoning Ordinance, we have the Subdivision Ordinance, Sign Code, and Building Code for example. Advisory Tools, Tracey just mentioned a few of those, but there is

*also a list of some of the other tools that we've done. For example, some of the areas where the land use does change would be part of 2005 Station Boulevard Plan. That area all north of Fox Valley Mall and Pacifica Square was originally planned to be ORI, which was light industrial. In 2005, we re-looked at that area, we had some inquiries too, and with the Route 59 Metra Station there, which is the busiest on all the lines of Metra, we thought it would be a good idea to look at some mixed use development and incorporate some residential in there, which is what we did. Subsequently, you can see with the Station Boulevard connection and then some of the residential townhomes and luxury apartments we put in there as an implementation of that plan. So that was an example of a subarea plan.*

*Next on zoning, again, zoning protects residents from other actions, but it is not intended to limit owner's use. Again, state statutes authorize local governments to zone. Case law limits how zoning is used. It is a tool to implement the plan, again, to regulate the use of land, for example, the amount of open space on a lot, setbacks, bulk of buildings, land coverage on lots, etc. Obviously, you guys know we have a whole range of types of zoning districts and keeping zoning current via either Text Amendments, which a lot of what you see are Text Amendments, where we may change some of the regulations in the Zoning Ordinance and then Map Amendments would be where you actually rezone a piece of property where the zoning does change.*

*Then we get into city rolls. Roles of the Planning and Zoning Commission, you are an advisory body of the City Council on short and long-range growth and development of the city through maintenance and implementation of plans and regulations formerly adopted by the City Council. In order to maintain and implement the city's Comprehensive Plan, some examples of what the Commission is empowered to give recommendations on are Comprehensive Plan Revisions and then supplemental plans or those neighborhood plans for the present and future development or redevelopment of the city. We also look at subdivisions, resubdivisions of land, that's where you have your preliminary and final plats we call them, zoning and rezoning of land, preliminary plans and final plans for development or redevelopment of land, conditional use permits, which for years was always called special use. We now call them conditional use. They mean the exact same thing and then zoning ordinance revisions or sign ordinance revisions would also come to you guys. The Commission is also an Appeals Board that could review zoning issues as part of the Zoning Ordinance. That doesn't come up very often where there is an appeal. Technically, one of them would be an appeal of a decision of the Zoning Administrator, myself, where they wanted an appeal of the Zoning Administrator's decision.*

*Just some responsibilities of the Planning and Zoning Commission. I know some of this is obvious and repetitive, but we try to send the packets out at least 48 hours to you guys, which would be the Monday. We really would like to try to get them always out on Friday, so you have at least the weekend, but at the latest, it would be Monday. Sometimes we're struggling because we get stuff kind of at the last minute, so we try to put everything together as quick as we can for you guys. I would also encourage a site visit out to the property in question. It is amazing how just going out there and looking at the site is a lot different than looking at it on an aerial. Please feel free to contact any of the staff if you have any questions, email or call us is totally fine. Play an active part, attend. Please let us know if you're going to be absent. I know you are pretty good about that. Just let Sue know, that would be great. Obviously, arrive on time, which you guys do. Just be a good listener to staff, the applicant, the public and other Commissioners. Feel free to ask questions and consider the project's relation to the Comprehensive Plan.*

Chairman Pilmer said I might just add, some of you are newer, but by all means, Ed and the staff are always real available, so don't hesitate to call if you have questions on Tuesday or Wednesday. It is extremely helpful. They've been helpful to me over the years and I would encourage you if you have questions that they can assist and they are always available.

Mr. Sieben said yes, 100%. Just some hearing procedures. Some of our cases are public hearings and generally follow Robert's Rules of Order to give structure to the hearing. Consider conditions to mitigate impacts raised by the public, so you guys can add conditions based on the public testimony. That's totally free for you guys to do that, which I know you've done. Try to avoid debates. Ask public questions, but make comments later. Obtain all information needed to make a decision. You have the right to continue a hearing if necessary to obtain additional information. That doesn't happen very often, but you do have that ability. One thing I'd like to add is consider the benefit of the proposal to the city as a whole. We might hear 5 or 3 or 10 neighbors come out on a project and we always try to mitigate and lessen any impacts on neighbors, but just keep in mind that we all represent 200,000 people, so we try to balance those needs. Professionally perform duties. Be consistent, fair and impartial. I would say avoid getting caught up. Sometimes it gets very emotional and some opinions. Just try to avoid getting caught up in all that. Please make all comments on the record. Try not to necessarily repeat comments by other Commissioners. We do ask that of the speakers too. Try to avoid jargon. Use terms understandable to the public. Be patient, courteous and respectful and remain calm, model appropriate behavior for all. I know over the pandemic we saw stories where Plan Commissioners have gotten fired for crazy comments on Zoom meetings. I know that doesn't happen here. Real briefly, some items reviewed by staff. The staff does look at building code issues, property maintenance issues, some security issues. We sometimes get the police involved. Elected officials do look at financial issues. Some of the items typically not under the peruse of the Planning Commission would be like interior design, internal business operations, rents, sale prices, and unit mix, although that is totally fine to inquire about that just as a inquiry, but we don't base our zoning or land use decisions based on what is the price or what's the sale price, things like that, the rents. Finally, business competition, free market. I know I've not experienced that here, but I've read in other communities where the Commission or City Council may turn down a request because it is competition of another business in town or things like that. That's really not, obviously, what we get into.

Mrs. Owusu-Safo said I know when we do Findings of Fact, we discuss saturation. That's different from competition, right?

Mr. Sieben said absolutely.

Mrs. Vacek said that's looking at the land use and that's looking at the saturation of that certain land use versus looking at somebody being competitive against somebody else.

Mr. Sieben said one of the last things is outside communication and contact. Sometimes there will be some communication between Commissioners and others outside of the public hearing. It may be a developer. It may be a neighbor. You may run into someone in the street. This would include, again, in-person contact if someone calls you, someone sends you a written letter separately outside of this body, either by the applicant or any other interested party. Avoid it as it could invalidate ultimate determination. What you should do is thank them and suggest that the interested party attend the hearing or send comments to staff and then staff can relay

*them formerly into the record. That would probably be the best thing. If you go to the site, you may run into the homeowner or something like that. Try to avoid contact with the person. Just indicate you're there to observe. You must disclose any ex parte contact at the hearing. Do you want to, Marissa, describe ex parte, what that means briefly?*

*Ms. Spencer said ex parte communication is just anytime you're spoken to outside of the hearing. The only time you should ever be talking to the Petitioner or anyone else regarding the actual hearing or petition should be in the hearing. Anything outside of that is not appropriate. If someone would approach you before or after, that's when you want to make sure you talk to staff and let them know.*

*Mr. Sieben said and then finally the last thing I have here is roles of staff. The staff, what we do is guide the applicant or petitioner through the application process. It could start with a phone call or an email. If they are serious about a project or development, we have them start with our DST process. DST means Development Services Team. It's kind of a pre-application meeting where we get everyone together. We're actually still doing it via Zoom. It actually works very well with Zoom. We have a core on the city's side of myself for Planning and Zoning. We have Herman Beneke with our Building Department and Fire representative and then Mark Phipps is the Development Coordinator in Engineering. That's the core 3. Then we will get others. Sometimes we will have one of the Planners in my office sit in on that. We would sometimes have someone from Economic Development. Often, we do have someone from Invest Aurora, our outside Economic Development partner, sit in on that. We give some general guidance, let them know procedure, let them know how it complies with the Comprehensive Plan, here's some things that don't comply with some aspect of the Zoning Ordinance, for example, and things like that. Go over fire access issues and things like that. So that's kind of our first step. Again, that's part of the education line there. Again, we do review relevant portions of the different city codes at that meeting. Our goal, we remain neutral, fair and consistent with supporters and objectors. We do obtain and gather relevant information from the applicant, other staff and research that is necessary for the Commission to make informed decisions on the application. We make educated and objective recommendations based on the relevant city ordinance or code and we explain the applicant's petition and the applicant advocates for their request. It is pretty straightforward. Does anyone have any questions on that? Otherwise, I'm going to just briefly turn it over to Tracey. She can kind of go over, in general, our different types of groups.*

*Mrs. Vacek said I'm sure you guys are all kind of aware of these, so I'm just going to kind of go really fast over this. We do have rezonings. Rezoning is just reclassifying a different zoning district to allow a different purpose or use on the property. These are map amendments and, again, just changing the zoning. Most of the time they will comply with the Comprehensive Plan. Now there are instances where they may not totally comply or if it's a big change like what we just saw with the Wolf's Crossing Subarea, we would do a Comprehensive Plan Revision prior to doing the rezoning or at the same time.*

*A Planned Development is basically zoning that generally allows flexibility in the configuration of the buildings and uses on the site that allow other than what's the standard practice in the Zoning Ordinance. We do this a lot. There is a lot of benefit to not only the developer, but to the city. It does allow flexibility in design. It allows the construction in phases, and it includes variances if it is in the public's interest. The benefit to the city is access to valued amenities, provides open space and recreational uses and then it preserves some open spaces or environmental resources.*

*Both of these, the Rezoning and the Planned Development, are public hearings, so you would have public able to attend and testify on those.*

*Conditional Uses, again, that is also a public hearing and this is a use that's permitted subject to compliance with a set of conditions or requirements set forth by the Zoning Ordinance. Those are those findings of facts that you have. Marissa will kind of get into the findings a little later, so we will talk about that. But usually conditional uses possess some kind of unique characteristic or impact. The recommendation by you guys should be based on those findings.*

*Variances are a deviation from the set rules of the municipality for the land use or the land use development. These are if carrying out the strict letter of the ordinance will create a practical difficulty, so there really needs to be a practical difficulty in order to approve these. Usually I think that we are pretty good at kind of explaining why we feel if we are approving something why we feel that there is that practical difficulty. Uses cannot be a variance. Use variances are prohibited, so you can't prohibit a certain use by a variance. Then again, the Commission's recommendation should be based on those findings.*

*Then we have Plans and Plats. We have preliminary and final plans. The preliminary plans and plats are basically a procedure to divide the land, so it would be dividing it into two. Sometimes it is consolidating three properties into one, so that would be the final plats. Then the final plans are site plans. Those are actually the layouts. Those would include landscaping plans and building elevations that you will see before you.*

*That is not all of them. We just hit the main ones. I'm going to turn it over to Marissa.*

*Ms. Spencer said I'm going to go over your meetings and the hearings. Generally your meeting is going to have roll call, you are going to go over prior minutes or other business, then you are going to allow the public comment and then you will usually have the hearing. Within the hearing there will be the sworn testimony, the staff report, a summary and a closing and then you will make a decision. Now it probably doesn't show up as red on yours, but on the screen you'll see in red, that's the hearing. There will be other parts of your meeting, but only the red is the hearing. Notice how the public comment is not in red. Sometimes it is easy to take into consideration the public comment that comes before the hearing, but you'll need to remember that that's just public comment. They are not sworn in. It is just their opinion. Now some people from the public will come and be sworn in and speak during the hearing. Now that is evidence, but any of the public comment that comes before the hearing is not evidence and you should not consider that in reviewing the evidence in making your decision.*

*Mr. Elsbree can I ask why the decision is not in (inaudible).*

*Ms. Spencer said don't you usually close the hearing and then you make your decision?*

*Mrs. Vacek said yes.*

*Chairman Pilmer said and the public comment that she is referring to is in accordance with the Illinois Open Meetings Act, so they could talk to us about the weather for 3 minutes. We rarely ever get anybody. We had one person.*

*Ms. Spencer said we did put in our ordinance, or at least we've revised our Boards and*

*Commissions ordinances, so now it does specify that they should speak to you based on topics within your prevue, so they might not speak about something that's before you today, but they should always, at least, be speaking to you on something that is within your review and that's relevant. So if they come and talk to you about, I guess, the weather, you can tell them I'm sorry that's not relevant, please take a seat. They can come and talk. Under the Open Meetings Act, everyone's entitled to come and speak at every public meeting and give their 2 cents. Our particular rules within this city is we limit public comment to 3 minutes. Different cities, different boards have different rules, but those are our particular rules.*

*Mrs. Vacek said the 3 minutes is not for the public hearing. It is just for the public comment.*

*Ms. Spencer said correct. If a member of the public comes in and wants to testify for the hearing, we have to let them speak as long as they want because, again, that's the evidentiary part and you don't want to be limiting what people are saying. You want to allow the evidence to come in. So there are no time limits on that portion.*

*Mr. Choudhury said it the testimony part?*

*Ms. Spencer said yes, under the testimony part. There are no time limits on that. So here I put through generally this is the procedure that you would go through in a hearing. You might not go through all of these because you might not have other interested parties who want to testify, but in general staff is going to identify the petitioner and any interested parties. Then they are going to submit the proof of notice that's required. Then you will hear the testimony and evidence that the petitioner or applicant is presenting. You can also at that point you guys can examine the petitioner's witnesses and ask for any questions. Then testimony or other evidence could be presented by other interested parties or people from the public. Then you would have the opportunity to ask them questions if you wanted to. Finally, the other interested parties can cross examine the petitioners if they want to and ask questions. In some cases they might go back and ask more questions if you feel that something is not clear or hasn't been covered by the different parties. Finally, staff will give a report and then the petitioner is going to have an opportunity to make a statement. The interested parties who were sworn in and spoke, they're going to have an opportunity to make a statement and then finally you can offer a rebuttal or final closing by the Petitioner. What I want to point out is that the sworn testimony and the evidence and the documents that are presented, that is evidence, but the closing portion, that, just like in a trial, there's a little more deference given and so the petitioner or closing party, they can argue and advocate for their position. In this part, they might us hypotheticals or potential scenarios and you need to be careful not to consider anything that's not factual and that's not evidence. It is their time to advocate and so it is their opportunity to raise their opinions, but you have to be careful not to consider factors that aren't actual facts.*

*Mrs. Vacek said the one thing, Marissa, we do a summary to begin with and then we turn it over to the Petitioner.*

*Ms. Spencer said that's fine. This is just a general procedure. It doesn't matter the order, but generally these are all the things that are included in the hearing. If it's moved around, it's not a big deal. After you've heard all the evidence presented, you are going to go through and you are going to weigh the evidence. So what you want to consider is that not all evidence is equal. Again, I already discussed that the public comment is not evidence. You can't consider it. You obviously heard it, but you have*

to realize that it's not actual evidence. From the sworn testimony, you need to look again at the source of the evidence for information that was presented. Was it presented by an applicant, a member of the public? As far as the applicant, they'll testify as to what they are going to do, what the plan is proposed and what is actually going to happen. Whereas, you might have members of the public who cite to other sources or studies that are hypotheticals or something they read on a blog and so you have to be careful not go down the rabbit hole of sometimes falling into they might present more emotional evidence or hypothetical evidence rather than actual facts. You also want to be looking at the ordinance requirements. They might raise issues that have nothing to do with our ordinance and have nothing to do with what standards you are supposed to be approving or denying this request. That's their right to. That's their concern. That's their opportunity to present their information and their evidence, but at the same time, if it's not relevant to your review, you have to consider that when you're actually weighing the information they're presenting. Again, sometimes that testimony will contain irrelevant information or red herrings that are trying to distract you from the actual ordinance and the actual standards that you are supposed to be reviewing. You should also remember that the documents that you're being presented or that you're reviewing as part of the packet, that's actual evidence. That's actual facts. They are going to be held to those standards if their petition is approved. If they don't uphold those standards and what is in that packet, their project will not go forward. So any potential hypotheticals that they're not going to do these things or they're not going to follow through, I heard about this happening before in another city and they didn't do it, again, you have to realize that whatever is in the packet you have to kind of consider as fact because if they don't follow through with what's in that packet, they're not going to get their building permits, they are not going to be able to proceed.

Mr. Sieben said Marissa, what about documents presented during the testimony, let's say by neighbors or outsiders?

Ms. Spencer said the same thing. You are going to have to weigh it and look at whether it is relevant and how reliable the evidence is. They might be presenting information, again, that has nothing really to do with this project and the standards set by the ordinance. Even if it is very accurate and very factual, if it is not a factor that you're supposed to be considering based on the ordinance, you really shouldn't be considering it. It doesn't have as much weight. If they are presenting you documents of, again, information that isn't necessarily a reliable source, again, you have to consider that and how much weight you give whatever documents they present.

Chairman Pilmer said I think we've had a couple of times over the years where we worry that they are going to comply, but that's really not our job once it leaves here. Our job is to look at the evidence and once it leaves here, then it's in the staff's hands, even three years down the road whether they are doing anything.

Ms. Spencer said exactly and that's why you just have to take it as fact because if they are not in compliance, that's all a hypothetical that they wouldn't comply. You have to look at what they are required to do and based on those requirements will that meet the factors in the ordinance.

Mr. Choudhury said I understand this. But just in a typical situation where I know before coming to the hearing they might have done a lot of homework, but is it possible that if there is a hearing and on the issues if the Commission feels like not proper evidences were actually given or some more work can be done, do we have to make a decision at that point or can we just say we'll have another hearing?

*Ms. Spencer said I think you could if you felt that there wasn't enough evidence, I think you could probably hold the hearing over and allow the applicant an opportunity to provide more evidence or to agree to the additional standards you are looking for to meet the standard. So perhaps, if you are looking for additional mitigation or additional requirements that you want to add on but you can't perhaps think of what might meet those requirements, you can say we will pause the hearing and give you an opportunity to come up with additional mitigations to meet this requirement or to meet this factor. The other thing is you can also ask staff in the hearing what they would suggest and they might be able to give you additional requirements that could be added if you think there is a certain factor that isn't quite being met.*

*Mr. Chambers said and also just to make a point, I think a lot of times you'll see when things may not be met at that particular time, but staff is well aware that it will be met and that you'll see it listed as conditional approval. I think staff does an excellent job in making sure that all the information is provided for us prior to and it makes that process much easier.*

*Ms. Spencer said so questions to ask yourself when weighing the evidence, you're going to want to look at is there any conflicting evidence that conflicts with what the petitioner is showing or what the public is providing, does it conflict or is it just separate evidence that doesn't necessarily conflict? You are also going to want to look is it a reliable source. Is this information even relevant according to our ordinance and is this an opinion, is this speculation or is this fact? The reason why we do findings of fact are we want to ensure that every decision is consistent, every decision is fair. After you go through the hearing and you close the hearing, that's when you're going to sit down, discuss and make your findings of fact. You're going to go and look at the standards in the code. So what it does is your standards should include the standards that we get from the code and by using the ordinance or the code, it ensures that everyone is treated the same and they are held to the same standards. It makes sure you are applying actual facts to the standards. It helps and reduces any bias, prejudice, any personal opinions, and it helps explain why the application or petition was either approved or denied. It also ensures that the petition was considered on its merits and it sets a clear record for all your decisions and recommendations. One example is the BCA Aurora Animal Hospital. If you go to the back of your packet, in that case, the petitioner submitted an application for a Conditional Use and under our ordinance it specifically states what the Commission should deliberate on in making its decision. So the Commission should review those factors and decide if evidence weighs in favor or against granting the Conditional Use. In deliberating upon a proposed Conditional Use, the Commission shall consider whether, and this comes directly from the city's ordinance, so again, this is to help you keep on track and make sure that everyone's treated the same, so it tells you, I'll just read the first few because I don't want to get too redundant. You're supposed to consider: 1) The establishment, maintenance or operation of the conditional use will be unreasonably detrimental to or endanger the public health, safety, morals, comfort, or the general welfare. 2) The conditional use will be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted or will substantially diminish and impair property values within the neighborhood; factors including, but not limited to, lighting, signage, outdoor amplification, hours of operation, refuse disposal areas and architectural compatibility and building orientation. 3) The establishment of the conditional use will impede the normal and orderly development and improvement of surrounding property for uses permitted in the district. So I'm not going to on, but again, this specifically outlines what you want to look at and what you want to make sure their application addresses. Does their*

*application avoid all of these issues? Does it address all these issues and make sure that these issues are not going to be a problem in our community? If you go and you look at, is it actually in there, the staff report?*

*Mrs. Vacek said no.*

*Ms. Spencer said I'm sorry that you don't have a reference. I thought there was a staff report in there that went through each and all of these and says like we find that it doesn't endanger the public, health, safety, morals and comfort or general welfare of our community. They've limited lighting, they've minimized signage, there's not outdoor amplification, the hours of operation are reasonable, they've contained all garbage disposal in areas and it's architecturally compatible with the area. So the staff will go through and kind of recommend what they think the findings of fact are based on the package that has been put together by the petitioner. Maybe we can get them the actual. So you'll want to compare the ordinance to that actual staff report and see and that's what you are going to want to do in your findings of fact.*

*Chairman Pilmer said so we really shouldn't answer the question and say no it does not. We should be explaining a little greater, either as listed in the staff report or state those objectives?*

*Ms. Spencer said what I would like to see happen is for you guys to either adopt or modify what the staff has written because you are either going to agree with them or not agree with them and so you are going to want to go through each of those because their staff report specifically looks at the ordinance.*

*Mrs. Vacek said I think with our staff reports, I think we are going to start, and you'll start seeing it, and I know we've been kind of doing it a little bit more lately, but we are going to try to kind of highlight those a little bit more so you have those kind of to compare to.*

*Mr. Sieben said exactly. I think, as Tracey said, we started about 3 or 4 months ago. I think we started it with a project that we knew was going to be controversial, so we wanted to highlight that. Jake's staff report, which we'll send back to you guys, I know you've seen it once before, but that's kind of an example of how we'll number through these and list the reasons why, so if you guys agree, you can just say as stated in the staff report.*

*Mrs. Vacek said or you can repeat what's in the staff report.*

*Chairman Pilmer said I know you've been doing that as of late and it is helpful.*

*Ms. Spencer said and the reason why we want to do these findings of fact is it ensures a consistent and fair decision. What it does is you are going to be able to look at the relevant code or ordinance and the reason why we want to look that is because the code is like our measuring stick and it ensures that everyone is held to the same standard, so if we are using the same measuring stick for everyone, that's how we make sure we are fair. Then you are going to look at the evidence. You are going to consider what was presented. You don't want to consider any speculation, only look at the evidence. Also consider the evidence in light of the interest of the whole community, not your personal opinion, or not just groups that were present at the hearing. You want to look at in the light of, again, how it impacts the whole City of Aurora. Then you are going to weigh the evidence and in weighing the evidence, you want to consider the source, the accuracy and the significance of what was presented*

*and then finally you are going to make a decision that's consistent with the evidence presented and look at whether the applicant's petition meets the code requirements or not. Again, you don't want to consider factors that aren't included in the (inaudible). Again, we'll give you an example. Before I move onto ethics and conflict of interest, does anyone have any questions on that?*

*So as an appointed Commissioner, you must uphold your ethical obligation. That's going to include conducting yourself in a professional manner, listening to the evidence, and not considering your personal biases or prejudices. You have a duty to uphold your service to the public interest. Do not accept gifts from petitioners or applicants which are meant to influence your decision. If anyone tries to give you a gift, make sure you tell staff immediately. Don't participate in hearings which you have an interest, a potential benefit, or possible conflict of interest. If you have a question, don't hesitate to ask the staff. They'll be glad to guide you through it as to whether or not there's a conflict or an appearance of impropriety. Finally, under statute, you have to file an annual disclosure statement. Do you get those from the Clerk or from the County?*

*Chairman Pilmer said both.*

*Ms. Spencer said unfortunately, that's another duty and obligation you have to do as a Commissioner as part of your service. Going over conflicts of interest, if you have business or financial relationship with an applicant or a client or customer, that would be a conflict of interest, or if you have any financial interest in the project or with one of the business partners or an applicant, or you own the property, that's going to be a conflict. The appearance of impropriety is a little different. There's not actually a conflict, but it might impair your ability to exercise independent judgments so you might not have a financial interest, but you might still be influenced. In that case, it's not technically a conflict, but you're going to probably recuse yourself so there is no appearance of impropriety. In those situations, you'll recuse yourself if there is an actual conflict of interest or you'll want to disclose on the record what relationship exists if there is an appearance of impropriety. Again, if you have any questions about it or if you are ever worried about it, just talk to staff and they'll be glad to help you with it. Also, as a public body, you are subject to the Open Meetings Act. All public bodies, all the meetings, have to be open to the public. We want to be transparent, so the public is always welcome at the meetings. It also allows them to understand the decision making process and understand what exactly you guys do. The Open Meetings Act is also meant to hold government accountable. Again, as I mentioned, all your meetings are open to the public. The only difference is that if there is actually a hearing, there's more notice required, but that's really more related to the zoning requirements, whereas if you are not making any decisions, there's no hearing, it only requires a 48 hour notice requirement and that's under the Open Meetings Act. Also under the Open Meeting's Act, you don't ever want to be communicating in violation of the Open Meeting's Act. If there is ever a majority of a quorum among you guys, (inaudible) only be speaking about anything of public business or anything related to what you guys normally deliberate on. That doesn't just include talking in person. That includes emails, phone calls, text messages. So that's why we always encourage you guys don't do group emails. In general, talk to staff. If staff ever sends you emails, they probably blind carbon copy all of you so that you can't accidentally reply all. Most of the time, if you were to accidentally replay all, you're probably not talking about anything substantive or any of the petitions. You are probably just talking about what time you can meet. But still, we always err on the side of caution and ask you to communicate one on one to staff or one on one with each other just be rather safe than sorry.*

*Mr. Sieben said I actually have a question. There have been a few occasions, a little bit of awkward situation, where an Alderman will appear at a Planning Commission meeting. Many times it is fairly innocent. Sometimes they will speak during the public testimony portion, sometimes not. Should they speak during the public testimony? Should they be sworn in? Can they speak outside of that? They almost act as if they're staff. Staff doesn't get sworn in, but everyone else does.*

*Ms. Spencer said so legally, we advise Aldermen not to become involved because they are an unusual situation of kind of authority in the fact that they are elected. We don't want them to have too much influence or power or perhaps make you guys feel uncomfortable with their position. Also from a legal standpoint, we don't want them to necessarily put themselves on the record and open themselves up to liability, so we advise them not to participate in the hearings. However, they are citizens, they are residents, they are free to do what they like or what they please. But if they do want to participate, they should be sworn in. If they are not sworn in, you really shouldn't be considering their testimony. If they want to participate, they should be participating either in the public comment beforehand or sworn in as testimony. Again, you need to weigh their evidence just as you would anyone else and that's where it is somewhat difficult because a lot of times they're advocating on behalf of their residents and so they are going to be saying that they represent several people or groups or whole communities, but essentially they are still just one person communicating. You're not having 20 swear in and testify and say we don't want 20 people to come in and say the same thing, but at the same time if one person comes in and says x, y and z, other people can come in and say I'm not going to repeat myself, but I support what that person says. You still have to figure that they're still only one person testifying and, again, you have to consider whether it is fact, whether it is opinion, whether emotion, whether it's hypotheticals, and so it is difficult because, again, they're very passionate in representing their constituents, but they're not always going to be necessarily representing facts and they're not always going to be looking to the ordinance and so that's where it's your job to remember where the measuring stick is, what factors you consider and only consider only those factors.*

*Chairman Pilmer said so just to clarify, in the instance of a public hearing, when we generally open that up, we would swear in the petitioner. They would present their case. We may have questions of staff and then we go to the public. Once we close the public hearing, we don't generally take additional testimony, so just if the Alderman wants to speak, we should swear them in?*

*Ms. Spencer said correct. At that point, if an Alderman comes in and wants to talk afterwards, you have to respectfully let them know that the hearing is closed. If they wanted to speak, it should have been done at the public comments or they should have been sworn in. But again, that's one of those things that you don't realize until after the fact. Sometimes that's the thing where it is hard. They don't necessarily know the procedure and know that that was not appropriate for them to do so.*

*Chairman Pilmer said I have one other unrelated question. We haven't had one in a while, but for a while we would have a lot of conditions, so we may say I want to add a condition that garbage doesn't get picked up until after 8 O'clock on the morning. We're just a recommending board, so I think a lot of times some conditions, when it goes to City Council, they are either rectified or taken off. Since we had it here, it doesn't necessarily mean it's going to go to City Council that way. Is that...*

*Ms. Spencer said that's how it's passed along to them. They don't have to accept your*

*recommendations or they can add their own recommendations. They should get that in their information and that's how it is presented to them, but again, they'll make their own independent decision.*

*Chairman Pilmer said but the petitioner could go to City Council and say we have to have it and we'll agree to 6:00 a.m., right?*

*Ms. Spencer said they could.*

*Mrs. Vacek said correct and they can change your condition also.*

*Chairman Pilmer said anything else?*

*Mr. Sieben said no, I think that's it for this item. Again, our next meeting is next Wednesday, 7:00 p.m. on August 18th.*

*Mrs. Anderson said do we have access to this presentation by chance?*

*Mrs. Vacek said I can send it all to you.*

*Mrs. Anderson said okay, that would be great.*

**This item was filed.**

## **PENDING**

## **ANNOUNCEMENTS**

*None.*

## **ADJOURNMENT**

**A motion was made by Mr. Chambers, seconded by Mrs. Anderson, that the meeting be adjourned. The motion carried by voice vote. Chairman Pilmer adjourned the meeting at 7:05 p.m.**

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