

**AGENDA ITEM EXECUTIVE SUMMARY**

Agenda Item number: 4g

Title:	Plan Commission recommendation to approve a General Amendment to Title 17 of the St. Charles Municipal Code (Zoning Ordinance) pertaining to Special Use findings of fact.
Presenter:	Russell Colby

Meeting: Planning &amp; Development Committee

Date: November 11, 2019

Proposed Cost: N/A

Budgeted Amount: N/A

Not Budgeted: **Executive Summary** (if not budgeted please explain):

On 10/14/19, the Planning and Development Committee voted 7-2 to direct staff to file a General Amendment application to revise the Findings of Fact for Special Use to remove the Federal law requirement. This discussion was in response to a discrepancy identified with Recreational Cannabis Dispensaries, which were approved as a Special Use in certain locations by City Council on 10/21/19.

Staff reviewed the ordinances of 17 nearby municipalities and found that St. Charles is unique in listing conformance with State and Federal law as a Special Use finding. The only other municipality surveyed that has a similar finding is Batavia. Like St. Charles, most municipalities require all Special Use findings to be in the affirmative in order to grant approval of a Special Use.

From a legal standpoint, Staff and the City Attorney reviewed the State Statute for Special Uses. The statute does not require inclusion of findings regarding State or Federal law conformance. The statute provides no specific guidance on what findings are appropriate and instead leaves this up to the municipality to determine. The City Attorney provided a letter that is included in the packet. His letter notes that traditionally, Special Use findings only reference the municipality's own codes or requirements.

From a practical standpoint, it may be advisable to eliminate references to Federal and State law from the findings of fact, as the City cannot ensure compliance with all Federal or State law as part of a Special Use review. The proposed amendment would remove reference to conformance with both Federal and State laws and instead reference only the St. Charles Municipal Code.

**Plan Commission Recommendation**

The Plan Commission held a public hearing on 11/5/19 and recommended approval of the amendment by a vote 4 to 2, with 1 additional member voting "present". (The member voting "present" commented that he did not feel he had enough information to vote on a recommendation.)

The dissenting commissioners, which included the Chairman, raised a number of points during the public hearing. Below is a staff summary of the main points:

- Did not support modifying a general ordinance requirement already in place in response to a single situation.
- The fact that the requirement may be unique to St. Charles does not necessarily mean it is inappropriate or needs to be removed from the code.
- State or Federal law requirements may be relevant to the Plan Commission's Special Use review depending on the project.
- The reference to State and Federal law could be further defined or narrowed, as opposed to being eliminated entirely.

**Attachments** (please list):

Plan Commission resolution, Staff Memo and attachments, General Amendment Application, Public Hearing transcript

**Recommendation/Suggested Action** (briefly explain):

Plan Commission recommendation to approve a General Amendment to Title 17 of the St. Charles Municipal Code (Zoning Ordinance) pertaining to Special Use findings of fact.

**City of St. Charles, Illinois**  
**Plan Commission Resolution No. 21-2019**

**A Resolution Recommending Approval of a General Amendment to  
Ch. 17.04 “Administration” regarding Findings of Fact for Special Uses  
and Amendments to Special Uses**

**Passed by Plan Commission on November 5, 2019**

WHEREAS, it is the responsibility of the St. Charles Plan Commission to hold public hearings and review requests for amendments to Title 17, “Zoning”; and

WHEREAS, the Plan Commission held a public hearing and has reviewed the petition for a General Amendment to Ch. 17.04 “Administration” regarding Findings of Fact for Special Uses and Amendments to Special Uses; and

WHEREAS, in accordance with Section 17.04.320.C, the Plan Commission has considered the following criteria for General Amendment:

**1. The Consistency of the proposed amendment with the City’s Comprehensive Plan.**

Not applicable.

**2. The Consistency of the proposed amendment with the intent and general regulations of this Title.**

References to conformance with State and Federal law are proposed to be removed. The substantive Special Use findings will remain unchanged- these findings directly respond items listed under 17.02.020 – Purpose and Intent. The procedure for review and approval of Special Uses is unchanged.

**3. Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, is more workable than the existing text, or reflects a change in policy.**

The amendment is more workable than the existing text, as the City does not have the authority to make a conclusive finding as to whether a proposed Special Use complies with laws other than our local municipal codes.

**4. The extent to which the proposed amendment would be in the public interest and would not serve solely the interest of the applicant.**

The City has proposed this amendment to better align the Special Use findings with the City’s review authority.

**5. The extent to which the proposed amendment creates nonconformities.**

The amendment will not create any new nonconformities.

**6. The implications of the proposed amendment on all similarly zoned property in the City.**

The amendment will apply to Special Uses across all zoning districts.

NOW, THEREFORE, be it resolved by the St. Charles Plan Commission to recommend to City Council approval of a General Amendment to Ch. 17.04 “Administration” regarding Findings of Fact for Special Uses and Amendments to Special Uses.

Roll Call Vote:

Ayes: Holderfield, Vargulich, Becker, Funke

Nays: Wallace, Melton

Absent: Kessler, Macklin-Purdy

Present: Pretz

Motion carried: 4-2

PASSED, this 5th day of November 2019.

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Chairman  
St. Charles Plan Commission

# Community & Economic Development

Phone: (630) 377-4443



## STAFF REPORT

**TO:** Chair Rita Payleitner  
And the Members of the Planning & Development Committee

**FROM:** Russell Colby, Community Development Division Manager

**RE:** Application for a General Amendment to Title 17 of the City Code (Zoning Ordinance) regarding Special Use Findings of Fact

**DATE:** November 6, 2019

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### I. GENERAL INFORMATION

Project Name: General Amendment – Special Use Findings of Fact

Applicant: City of St. Charles

Purpose: Update the Special Use Findings to remove references to State and Federal law

### II. BACKGROUND

On October 21, 2019, the City Council approved a General Amendment to allow recreational cannabis dispensaries as a Special Use in certain zoning districts.

During review of the application, a discrepancy was identified with the Findings of Fact for Special Use listed in the City's Zoning Ordinance. In order to approve a Special Use, the City must determine the application for Special Use meets all 6 Findings of Fact contained in the Zoning Ordinance. One of the findings is the Special Use conforms to local, State, and Federal law. Because sale of cannabis is currently illegal under Federal law, the City could not make that finding in the affirmative.

The issue was raised to the Planning & Development Committee on 10/14/19. Staff advised the Committee that it may be prudent to remove this finding from the City Code, as the City cannot ensure compliance with all Federal law as part of any Special Use review.

The Committee voted 7-2 to direct staff to file a General Amendment application to revise the Findings of Fact for Special Use to remove the Federal law requirement.

### III. ANALYSIS

The statutory authority to establish Special Uses as a part of zoning regulations is contained in the Illinois Municipal Code (65 ILCS 5/11-13-1). Sec. 11-13-1.1 requires that Special Use approval be based on criteria established by the Zoning Ordinance of the municipality. The Statute does not state what criteria should be included:

*“A special use shall be permitted only upon evidence that such use meets standards established for such classification in the ordinances, and the granting of permission therefor may be subject to conditions reasonably necessary to meet such standards.”*

State Statute does not require that a municipality consider conformance with State and Federal law as part of the findings of fact for Special Use. From a practical standpoint, it may be advisable to eliminate this requirement from the City Code, as the City cannot ensure compliance with all Federal or State law as part of any Special Use review.

The City Attorney provided a letter that is included in the packet. His letter notes that traditionally, Special Use findings only reference the municipality’s own codes or requirements.

#### Requirement in the City’s Zoning Ordinance

The stipulation requiring conformance with State and Federal law was added to the City’s Zoning Ordinance through the adoption of a comprehensive Zoning Ordinance update in 2006. The 2006 ordinance update completely replaced the City’s prior zoning regulations. There is no record of this specific language being discussed during the ordinance adoption process.

In 2006, the finding applied only to a Special Use for Planned Unit Development, but when the findings were reorganized in 2008, the finding was applied to all types of Special Uses (including Planned Unit Developments).

During the time period the comprehensive Zoning Ordinance update was being drafted from 2002-2006, there was conflicting State case law regarding how challenges to Special Uses decisions were to be reviewed in court. The uncertainty may have influenced recommendations from City’s legal counsel at the time.

#### Requirements of other area municipalities

Staff reviewed the codes of other area municipalities and found that our code appears to be unique in referencing Federal and State law within the Special Use Findings of Fact. Of the municipalities surveyed, only St. Charles and Batavia list conformance with State and Federal law. It is more common to require conformance with local laws.

Like St. Charles, most municipalities require all Findings of Fact to be made in the affirmative to approve a Special Use.

The information collected is summarized in the table below.

	Requires conformance with law:			Requires all Findings to be in the affirmative to approve a Special Use
	Federal	State	Local	
<b>Arlington Heights</b>				X
<b>Aurora</b>			X	X
<b>Bartlett</b>				X
<b>Batavia</b>	X	X	X	X
<b>Campton Hills</b>				X
<b>Carol Stream</b>				X
<b>Elburn</b>				X
<b>Elgin</b>				
<b>Geneva</b>			X	X
<b>Kane County</b>				X
<b>Lombard</b>				X
<b>Naperville</b>				X
<b>North Aurora</b>			X	
<b>ST. CHARLES</b>	X	X	X	X
<b>Schaumburg</b>				X
<b>South Elgin</b>			X	
<b>West Chicago</b>				X
<b>Wheaton</b>			X	X

#### IV. PROPOSAL

Based on the Planning & Development Committee’s direction, proposed is to remove the requirement that a Special Use conforms to Federal law. Also proposed is to remove reference to State law. Similar to Federal law, the City cannot ensure compliance with all State law as part of a Special Use review.

Specifically, proposed is to amend Ch. 17.04 “Administration”, Section 17.04.330 “Special Uses and Amendments to Special Uses”, Subsection C “Procedure”, Item 2 “Findings of Fact and Recommendations”, Finding “f”, as follows:

f. Conformance with Codes: That the proposed Special Use conforms to all ~~existing Federal, State and local legislation and regulation~~ **applicable provisions of the St. Charles Municipal Code** and meets or exceeds all applicable provisions of this Title, except as may be varied pursuant to a Special Use for Planned Unit Development.

The complete code section regarding Special Uses is attached for reference.

## **V. PLAN COMMISSION REVIEW**

The Plan Commission held a public hearing on 11/5/19 and recommended approval of the amendment by a vote 4 to 2, with 1 additional member voting “present”. (The member voting “present” commented that he did not feel he had enough information to vote on a recommendation.)

The dissenting commissioners, which included the Chairman, raised a number of points during the public hearing. Below is a staff summary of the main points:

- Did not support modifying a general ordinance requirement already in place in response to a single situation.
- The fact that the requirement may be unique to St. Charles does not necessarily mean it is inappropriate or needs to be removed from the code.
- State or Federal law requirements may be relevant to the Plan Commission’s Special Use review depending on the type of project.
- The reference to State and Federal law could be further defined or narrowed, as opposed to being eliminated entirely.

## **VI. ATTACHMENTS**

- Letter from City Attorney
- Application for General Amendment
- City Code section regarding Special Uses
- Information about Neighboring Communities’ Special Use Findings
- Illinois State Statute regarding Special Uses (note highlighted sections)

LAW OFFICES

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November 5, 2019

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BRIAN R. KUSPER

OF COUNSEL

IN REPLY REFER TO FILE NO.

Ms. Rita Tungare  
Director of Community & Economic Development  
City of St. Charles  
2 East Main Street  
St. Charles, Illinois 60174

Re: Application for General Text Amendment to Section 17.04.330 of the City of St. Charles Zoning Ordinance

Dear Rita:

Reference is made to the City's application for the General Text Amendment to Section 17.04.330 f., proposing to delete "existing Federal, State and local legislation and regulation," and inserting, in lieu thereof, "applicable provisions of the St. Charles Municipal Code," which is the subject of a public hearing before the City's Plan Commission on November 5, 2019.

Section 11-13-1.1 of the Illinois Municipal Code (65 ILCS 5/11-13-1.1) provides, in part, the statutory authority for the establishment of special uses and "standards," as follows:

A special use shall be permitted only upon evidence that such use meets standards established for such classification in the ordinances, and the granting of permission therefor may be subject to conditions reasonably necessary to meet such standards. (Emphasis added.)

The State statute does not provide guidance nor detail specific requirements for any particular standards that a municipality may, or even shall, establish with respect to the granting of a special use. As a home rule community, the City of St. Charles is afforded broad deference and zoning powers in establishing which standards may apply for approval of special uses.

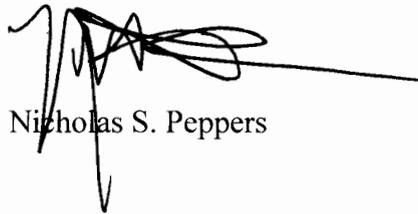
**STORINO, RAMELLO & DURKIN**

Ms. Rita Tungare  
November 5, 2019  
Page 2

Traditionally, local municipal zoning standards for special uses would not include a standard for conclusive findings, prior to establishment of a special use, that such special use prospectively meets Federal and/or State extra-jurisdictional laws, codes and/or regulations, but, instead, limit special use standards to its own codes and/or requirements.

Very truly yours,

STORINO, RAMELLO & DURKIN

A handwritten signature in black ink, appearing to read 'Nicholas S. Peppers', with a long horizontal line extending to the right.

Nicholas S. Peppers

NSP/jas

**CITY OF ST. CHARLES**  
TWO EAST MAIN STREET  
ST. CHARLES, ILLINOIS 60174-1984



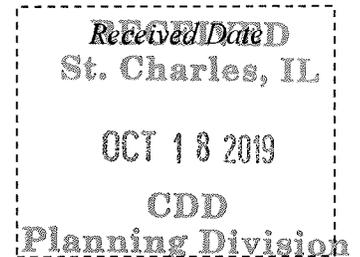
COMMUNITY DEVELOPMENT DIVISION

PHONE: (630) 377-4443

EMAIL: [cd@stcharlesil.gov](mailto:cd@stcharlesil.gov)

**GENERAL AMENDMENT APPLICATION**

<b>CITYVIEW</b>	
Project Name:	<u>GA - Findings of Fact</u>
Project Number:	<u>2019 -PR- 022</u>
Cityview Project Number:	<u>PLGA201900170</u>



*Instructions:*

*To request an amendment to the text of the St. Charles Zoning Ordinance (City Code Title 17), complete this application and submit it with all required attachments to the Planning Division.*

*City staff will review submittals for completeness and for compliance with applicable requirements prior to establishing a meeting or public hearing date for an application.*

*The information you provide must be complete and accurate. If you have a question please call the Planning Division and we will be happy to assist you.*

<b>Applicant:</b>	Name	City of St. Charles	Phone	(630)377-4443
	Address	2 E. Main St. St. Charles, IL 60174	Fax	
			Email	<a href="mailto:cd@stcharlesil.gov">cd@stcharlesil.gov</a>

**Attachment Checklist**

*If multiple zoning or subdivision applications are being submitted concurrently, do not submit duplicate checklist items or plans. Fee must be paid for each application.*

- APPLICATION FEE:** Application fee in accordance with Appendix B of the Zoning Ordinance (\$500)
- REIMBURSEMENT OF FEES AGREEMENT:**  
An original, executed Reimbursement of Fees Agreement and deposit of funds in escrow with the City, as provided by Appendix B of the Zoning Ordinance.
- REIMBURSEMENT OF FEES INITIAL DEPOSIT:**  
Deposit of funds in escrow with the City. (For a General Amendment application only: \$1,000 deposit.)
- FINDINGS:** Fill out the attached form or submit responses on a separate sheet.

□ **WORDING OF THE REQUESTED TEXT AMENDMENT**

**What is the amendment regarding?**

Review and update of Findings of Fact within the Zoning Ordinance. In particular, Special Use Findings-Finding "f" (17.04.330.C.2.f), to remove references to Federal and possibly State law.  
Also, review related Recommendations sections regarding whether all findings must be found in the affirmative.

**What sections are proposed for amendment?**

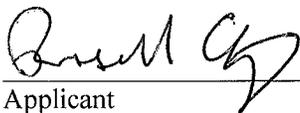
Chapters(s): Ch. 17.04 "Administration"

Section(s): 17.04.320, 17.04.330, 17.04.410

**The wording of the proposed amendment:** Insert below or attached wording on a separate page.

See attached.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**I (we) certify that this application and the documents submitted with it are true and correct to the best of my (our) knowledge and belief.**

  
\_\_\_\_\_  
Applicant

10/18/19  
\_\_\_\_\_  
Date

## PROPOSED AMENDMENT

### 17.04.330

#### Special Uses and Amendments to Special Uses

##### C. Procedure

1. Public Hearing

The Plan Commission shall hold a public hearing in accordance with Section 17.04.150, at which evidence in support of the proposed Special Use or Amendment to Special Use must be presented by, or on behalf of, the petitioner, and any evidence presented by interested parties shall be heard.

2. Findings of Fact and Recommendations

On the basis of the evidence presented at the public hearing, the Plan Commission shall record its reasons for recommending approval or denial of the petition (findings of fact) in accordance with the following standards:

- a. Public Convenience: The Special Use will serve the public convenience at the proposed location;
- b. Sufficient Infrastructure: That adequate utilities, access roads, drainage and/or necessary facilities have been, or are being, provided;
- c. Effect on Nearby Property: That the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood;
- d. Effect on Development of Surrounding Property: That the establishment of the Special Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- e. Effect on General Welfare: That the establishment, maintenance or operation of the Special Use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
- f. f. Conformance with Codes: That the proposed Special Use conforms to all ~~existing Federal, State and local legislation and regulation~~ **applicable provisions of the St. Charles Municipal Code** and meets or exceeds all applicable provisions of this Title, except as may be varied pursuant to a Special Use for Planned Unit Development.

No Special Use or amendment to Special Use shall be recommended by the Plan Commission unless it finds that the proposed Special Use or amendment to Special Use will conform with each of these standards. The Plan Commission shall submit its written findings together with its recommendations to the City Council after the conclusion of the Public Hearing, and also may recommend such conditions as it may deem necessary to ensure conformance with these standards

## Findings of Fact for General Amendment

### *To remove references to State and Federal Law from Special Use findings*

**1. The Consistency of the proposed amendment with the City’s Comprehensive Plan.**

Not applicable.

**2. The Consistency of the proposed amendment with the intent and general regulations of this Title.**

References to conformance with State and Federal law are proposed to be removed. The substantive Special Use findings will remain unchanged- these findings directly respond items listed under 17.02.020 – Purpose and Intent. The procedure for review and approval of Special Uses is unchanged.

**3. Whether the proposed amendment corrects an error or omission, adds clarification to existing requirements, is more workable than the existing text, or reflects a change in policy.**

The amendment is more workable than the existing text, as the City does not have the authority to make a conclusive finding as to whether a proposed Special Use complies with laws other than our local municipal codes.

**4. The extent to which the proposed amendment would be in the public interest and would not serve solely the interest of the applicant.**

The City has proposed this amendment to better align the Special Use findings with the City’s review authority.

**5. The extent to which the proposed amendment creates nonconformities.**

The amendment will not create any new nonconformities.

**6. The implications of the proposed amendment on all similarly zoned property in the City.**

The amendment will apply to Special Uses across all zoning districts.

**17.04.330 – Special uses and amendments to special uses**

**A. Purpose**

Special Uses listed within the various zoning districts include those uses that may be acceptable if established in an appropriate manner and location within a zoning district, but may not be acceptable if established in a different manner or location. Special Uses may include, but are not limited to, public and quasi-public uses affected with the public interest, and uses that may have a unique, special or unusual impact upon the use or enjoyment of neighboring property.

**B. Authority**

Special Uses and Amendments to Special Uses shall be authorized or denied by the City Council in accordance with the statutes of Illinois and this Title. No application for a Special Use or amendment to Special Use shall be acted upon by the City Council until after a public hearing has been held by the Plan Commission, after due notice has been made, as provided herein and by the applicable statutes, and after the findings and recommendations of the Plan Commission have been reported to the City Council.

**C. Procedure**

**1. Public Hearing**

The Plan Commission shall hold a public hearing in accordance with Section 17.04.150, at which evidence in support of the proposed Special Use or Amendment to Special Use must be presented by, or on behalf of, the petitioner, and any evidence presented by interested parties shall be heard.

**2. Findings of Fact and Recommendations**

On the basis of the evidence presented at the public hearing, the Plan Commission shall record its reasons for recommending approval or denial of the petition (findings of fact) in accordance with the following standards:

- a. **Public Convenience:** The Special Use will serve the public convenience at the proposed location;
- b. **Sufficient Infrastructure:** That adequate utilities, access roads, drainage and/or necessary facilities have been, or are being, provided;
- c. **Effect on Nearby Property:** That the Special Use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood;
- d. **Effect on Development of Surrounding Property:** That the establishment of the Special Use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- e. **Effect on General Welfare:** That the establishment, maintenance or operation of the Special Use will not be detrimental to or endanger the public health, safety, comfort or general welfare.
- f. **Conformance with Codes:** That the proposed Special Use conforms to all existing Federal, State and local legislation and regulation and meets or exceeds all applicable provisions of this Title, except as may be varied pursuant to a Special Use for Planned Unit Development. (Ord. 2008-Z-32 § 15.)

No Special Use or amendment to Special Use shall be recommended by the Plan Commission unless it finds that the proposed Special Use or amendment to Special Use will conform with each of these standards. The Plan Commission shall submit its written findings together with its recommendations to the City Council after the conclusion of the Public Hearing, and also may recommend such conditions as it may deem necessary to ensure conformance with these standards.

**3. Action by the City Council**

- a. The City Council shall not act upon a proposed Special Use or an amendment to a Special Use until it has received a written report and recommendation from the Plan Commission on the proposed Special Use or the amendment to the Special Use. The City Council shall not approve a Special Use or amendment to Special Use unless it finds that the proposed Special Use or amendment to Special Use will conform to each of the standards in the preceding Paragraph 2.
- b. An application for a proposed Special Use or an amendment to a Special Use shall be acted upon finally by the City Council within ninety (90) days of the receipt by the City Council of the recommendations from the Plan Commission unless it is mutually agreed upon by the City Council and the petitioner that more time is required.

**D. Conditions**

The City Council may require conditions that it reasonably deems necessary to protect the public interest and to meet the standards set forth in this Title. Conditions may pertain to the establishment, location, construction, maintenance and operation of the Special Use or amendment to a Special Use. When a

Special Use or amendment to Special Use is granted with conditions, the City Council may require the applicant to provide evidence and/or financial guarantees to ensure that the conditions will be complied with. Failure to comply with the conditions imposed shall constitute a violation of this Title.  
(Ord. 1981-Z-6 § 1 (part).)

E. No Presumption of Approval

The listing of a use as a Special Use within a zoning district does not constitute an assurance or presumption that such Special Use will be approved. Rather, each proposed Special Use shall be evaluated on an individual basis in relation to the standards of this Section and conformance with the other applicable provisions of this Title.

F. Limitations on Special Uses

1. A Special Use shall lapse twelve (12) months after the date it is granted, unless the Special Use or authorized construction for that Special Use (pursuant to a building permit) is commenced within that twelve (12) month period. However, the City Council may extend this period, upon written request from the applicant showing good cause. The provisions of this paragraph shall not apply to any Special Use for a Planned Unit Development.
2. Special Use approval is granted to a specific property and authorizes the conduct of the Special Use only on the property represented on the application and is not transferable to other properties.
3. The approval of a Special Use authorizes the use on the property in the manner proposed, but does not in itself authorize the establishment of such use without first obtaining all other required approvals, including building permits, sign permits and occupancy permits.
4. Any modification or intensification of a Special Use that alters the essential character or operation of the use in a way not approved at the time the Special Use was granted, as evidenced by the ordinance granting the Special Use, other record or by the provisions of this Title, shall require new Special Use approval in accordance with this Section.
5. If a Special Use ceases operation for a continuous period of twenty-four (24) months, the Special Use shall be deemed abandoned and the Special Use approval shall lapse. The Director of Community Development shall determine if a Special Use has ceased operation and shall notify in writing the record owner of the property. The notice shall be provided twenty-four (24) months prior to the date upon which the Special Use will be deemed abandoned. However, prior to the end of the twenty-four (24) month period the Director, at his/her discretion and for good cause, may extend, for up to twelve (12) months at a time, the period for abandonment.

If the Special Use is not reestablished within the aforementioned time period or extension thereof, the Special Use approval shall lapse, and a new Special Use approval shall be required to establish the use in accordance with this Section. This provision shall also apply to any existing use deemed a lawful Special Use in accordance with Section 17.02.040. The provisions of this paragraph shall not apply to any Special Use for a Planned Unit Development, which is subject to time limitations contained in Section 17.04.420.

(2008-Z-23 : § 16)

## Findings of Fact – Other Communities

\*Most require all findings to be in the affirmative to approve (except Elgin, South Elgin, North Aurora)

### Arlington Heights

All findings must be in the affirmative for PC to approve. Findings:

1. That the special use is deemed necessary for the public convenience at this location
2. That such use will not, under the circumstances of the particular case, be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity
3. That the proposed use will comply with the regulations and conditions specified in this Chapter for such use and with the stipulations and conditions made a part of the authorization granted by the village board.

### Aurora

All findings must be in the affirmative for PC to recommend approval. Findings:

- A. Is in accordance with all applicable official physical development policies and other related official plans and policies of the City of Aurora.
- B. Represents the logical establishment and/or consistent extension of the requested classification in consideration of the existing land uses, existing zoning classifications, and essential character of the general area of the property in question.
- C. Is consistent with desirable trend of development in the general area of the property in question, occurring since the property in question was placed in its present zoning classification, desirability being defined as the trend's consistency with applicable official physical development policies and other related official plans and policies of the City of Aurora.
- D. Will permit uses which are more suitable than uses permitted under the existing zoning classification.
- E. Will maintain a compatible relationship with the traffic pattern and traffic volume of adjacent streets and will not have an adverse effect upon traffic or pedestrian movement and safety in the general area of the property in question.
- F. Will allow for the provision of adequate public services and facilities to the property in question and will have no adverse effect upon existing public services and facilities.
- G. Takes adequate measures or they will be taken to provide ingress and egress so designed as to maximize pedestrian and vehicular circulation ease and safety, minimize traffic congestion, and will not substantially increase the congestion in the public streets.

Additional standards for Special Use petitions:

1. Will not preclude the normal and orderly development and improvement of surrounding properties due to the saturation or concentration of similar uses in the general area;
2. Is in all other respects in conformance to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the city council pursuant to the recommendations of the Plan Commission.

## **Bartlett**

All findings must be in the affirmative for PC to recommend approval. Findings:

1. That the proposed use at that particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community;
2. That such use will not under the circumstances of the particular case be detrimental to the health, safety, morals, or general welfare of persons residing or working in the vicinity or be injurious to property value or improvement in the vicinity;
3. That the special use shall conform to the regulations and conditions specified in this title for such use and with the stipulation and conditions made a part of the authorization granted by the Village Board of Trustees.

## **Batavia**

All findings must be in the affirmative for PC to recommend approval. Findings:

1. The proposed use will not be detrimental to health, safety, or general welfare of persons living or working in the vicinity, to adjacent property, to the neighborhood, or to the public in general;
2. The proposed use, as conditioned, conforms with the purposes, intent, and policies of the Comprehensive Plan and any applicable area, neighborhood, or other plan adopted by the City Council
3. The proposed use conforms with the conditions, requirements, or standards required by the Zoning Code and any other applicable local, State, or Federal requirements; and
4. The proposed use, as conditioned, would not unreasonably interfere with the use and enjoyment of nearby properties.

## **Campton Hills**

All findings must be in the affirmative for Zoning Board to approve: Findings (same as Kane County):

1. That the establishment, maintenance or operation of the special use will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare
2. That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood
3. That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district
4. That adequate utility, access roads, drainage and/or other necessary facilities have been or are being provided
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads
6. That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendations of the Zoning Board of Appeals.

## **Carol Stream**

All findings must be in the affirmative to approve. Findings:

1. Is deemed necessary for the public convenience at the location;
2. Will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare;

3. Will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
4. Will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district;
5. Will provide adequate utilities, access roads, drainage and other important and necessary community facilities; and
6. Will conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the Board of Trustees.

## **Elburn**

All findings must be in the affirmative to approve. Findings:

- A. Will be harmonious with and in accordance with the general objectives of the Comprehensive Land Use Plan and/or this Zoning Ordinance.
- B. Will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not alter the essential character of the same area.
- C. Will not be hazardous or disturbing to existing or future neighborhood uses.
- D. Will be adequately served by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewers and schools, or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services.
- E. Will not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the Village of Elburn.
- F. Will not involve uses, activities, processes, materials, equipment and/or conditions of operation 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.
- G. Will have vehicular approaches to the property which shall be so designed as to not create an undue interference with traffic on surrounding public streets or highways.
- H. Will not increase the potential for flood damage to adjacent property, or require additional public expense for flood protection, rescue or relief.
- I. Will not result in the destruction, loss or damage of natural, scenic or historic features of major importance to the Village of Elburn.

## **Elgin**

Does not appear all findings must be in the affirmative to recommend approval. City Code states, "The granting of a conditional use shall be contingent on the extent to which affirmative findings are made with respect to each of the following standards". Findings:

- A. Site Characteristics: The suitability of the subject property for the intended conditional use with respect to its size; shape; significant natural features including topography, watercourses, and vegetation; and existing improvements.
- B. Sewer And Water: The suitability of the subject property for the intended conditional use with respect to the availability of adequate municipal water, wastewater treatment, and stormwater control facilities.
- C. Traffic And Parking: The suitability of the subject property for the intended conditional use with respect to the provision of safe and efficient on site and off site vehicular circulation designed to minimize traffic congestion.
  1. Nonresidential land uses should be located central and accessible to the area or population served without requiring traffic movements through or into a residential neighborhood. Nonresidential land use should not be located within residential neighborhoods, but on their periphery as defined by the arterial street system.

2. The number of locations for vehicular access to or from a public right of way should be limited to those which are necessary for the reasonable use of the property and consistent with current traffic engineering standards. Property with two (2) street frontages should not be permitted access to or from the street with the higher degree of continuity within the overall street system or with the higher traffic volume. With the exception of residential driveways, locations for vehicular access to or from a public right of way should be aligned directly opposite existing or approved locations across the street.
- D. Location, Design, And Operation: The suitability of the subject property for the intended conditional use with respect to it being located, designed, and operated so as to promote the purpose and intent of this title and chapter.
- E. Historic Preservation: Where applicable, the suitability of the subject property for the intended conditional use with respect to making possible an efficient contemporary use of, or a compatible improvement to a designated landmark or property located in a designated historic district while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values to a historic preservation plan and subject to the provisions of title 20 of this code.

## **Geneva**

All findings must be in the affirmative for PC to recommend approval. Findings:

1. The proposed use at the specified location is consistent with the comprehensive plan.
2. The proposed building or use will not diminish the value of adjacent and nearby properties.
3. The proposed use at the specified location will not substantially or unduly increase traffic, traffic congestion and on-street parking demand in the immediate vicinity of the proposed use and in the area affected by traffic generated by the proposed use.
4. The proposed use has been designed to provide for adequate ingress and egress to minimize potential vehicle conflicts and congestion in public streets.
5. The proposed building or use will not adversely affect or change the character of the area in which it is located.
6. The proposed use at the specified location will not adversely affect the use and development of adjacent and nearby properties in accordance with the regulations of the district in which they are located. The location, size and height of proposed buildings and other structures, and the operation of the use will not adversely affect the use and development or hinder the appropriate development of adjacent and nearby properties.
7. Adequate utility, drainage, parking and other necessary facilities to service the proposed use will be provided and that such utility, drainage, parking and other necessary facilities will not adversely affect the use, development and value of adjacent and nearby properties.
8. The proposed building, other structures and use comply with any and all regulations, conditions or requirements of the city applicable to such building, structure or use.
9. That the exterior architectural appeal and function of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district to cause a substantial depreciation in property values in the neighborhood.

## **Kane County**

All findings must be in the affirmative for Zoning Board to recommend approval. Findings:

7. That the establishment, maintenance or operation of the special use will not be unreasonably detrimental to or endanger the public health, safety, morals, comfort or general welfare

8. That the special use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood
9. That the establishment of the special use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district
10. That adequate utility, access roads, drainage and/or other necessary facilities have been or are being provided
11. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets and roads
12. That the special use shall in all other respects conform to the applicable regulations of the district in which it is located, except as such regulations may in each instance be modified by the County Board pursuant to the recommendations of the Zoning Board of Appeals.

## **Lombard**

All findings must be in the affirmative for PC to recommend approval. Findings:

- A. That the establishment, maintenance, or operation of the conditional use will not be detrimental to, or endanger the public health, safety, morals, comfort, or general welfare;
- B. That the conditional use will not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood in which it is to be located.
- C. That the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district;
- D. That adequate public utilities, access roads, drainage and/or necessary facilities have been or will be provided;
- E. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets;
- F. That the proposed conditional use is not contrary to the objectives of the current comprehensive plan for the Village of Lombard; and
- G. That the conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located, except as such regulations may, in each instance, be modified pursuant to the recommendations of the Plan Commission.

## **Naperville**

All findings must be in the affirmative for PC to recommend approval and for City Council to approve. Findings:

1. The establishment, maintenance or operation of the conditional use will not be detrimental to, or endanger the public health, safety and general welfare; and
2. The conditional use will not be injurious to the use and enjoyment of other property in the immediate area for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood;
3. The establishment of the conditional use will not impede the normal and orderly development and improvement of the adjacent property for uses permitted in the district.
4. The establishment of the conditional use is not in conflict with the adopted comprehensive master plan.

## North Aurora

Does not appear all findings must be in the affirmative to recommend approval. City Code states, "An application for a special use shall not be approved unless the application is determined to be considered in light of each of the following standards". Findings:

1. The proposed special use is, in fact, a special use authorized in the zoning district in which the property is located.
2. The proposed special use is deemed necessary for the public convenience at that location.
3. The proposed special use does not create excessive additional impacts at public expense for public facilities and services, and will be beneficial to the economic welfare of the community.
4. The proposed use is in conformance with the goals and policies of the Comprehensive Plan, and all Village codes and regulations.
5. The proposed special use will be designed, located, operated, and maintained so as to be harmonious and compatible in use and appearance with the existing or intended character of the general vicinity.
6. The proposed special use will not significantly diminish the safety, use, enjoyment, and value of other property in the neighborhood in which it is located.
7. The proposed special use is compatible with development on adjacent or neighboring property.
8. The proposed special use minimizes potentially dangerous traffic movements, and provides adequate and safe access to the site.
9. The proposed special use provides the required number of parking spaces and maintains parking areas, in accordance with the requirements of this Ordinance.
10. The proposed special use is served by adequate utilities, drainage, road access, public safety, and other necessary facilities.
11. The proposed special use conforms with the requirements of this Ordinance and other applicable regulations.

## Schaumburg

All findings must be in the affirmative to approve. Findings:

1. The proposed use at that particular location requested is necessary or desirable to provide a service or a facility which is in the interest of public convenience and will contribute to the general welfare of the neighborhood or community; and
2. Such use will not, under the circumstances or the particular case, be detrimental to the health, safety, morals or general welfare of persons residing or working in the vicinity or injurious to property values or improvements in the vicinity; and
3. The proposed use will comply with the regulations and conditions specified in this chapter for such use and with the stipulations and conditions made a part of the authorization granted by the village board.

## South Elgin

Does not appear all findings must be in the affirmative to recommend approval. City Code states, "The Planning and Zoning Commission shall evaluate the application based upon the Zoning Administrator's report, the evidence presented at the public hearing, and each of the standards of § [156.03.C.3.d](#) (Standards for Special Use Permits)...The Village Board, Planning and Zoning Commission, and Zoning Administrator shall evaluate applications for special use permits with specific written findings based on each of the standards of this Section". Findings:

1. The proposed special use will not endanger the health, safety, comfort, convenience and general welfare of the public.

2. The proposed special use is compatible with the character of adjacent properties and other property within the immediate vicinity of the proposed special use.
3. The proposed special use will not impede the normal and orderly development and improvement of adjacent properties and other property within the immediate vicinity of the proposed special use.
4. The proposed special use will be provided with adequate utilities, access roads, drainage, and/or other necessary facilities.
5. The proposed special use is consistent with the intent of the elements of the Comprehensive Plan, this Unified Development Ordinance, and the other land use policies of the Village.

### **West Chicago**

All findings must be in the affirmative for Zoning Board of Appeals to recommend approval and for City Council to approve. Findings:

- A. Is necessary for the public convenience at that location or, in the case of existing nonconforming uses, a special use permit will make the use more compatible with its surroundings;
- B. Is so designed, located and proposed to be operated that the public health, safety and welfare will be protected;
- C. Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located; and
- D. The proposed special use is designated by this code as a listed special use in the zoning district in which the property in question is located.

### **Wheaton**

All findings must be in the affirmative to approve. Findings:

1. The establishment, maintenance, or operation of the special use shall not be detrimental to the public health, safety, morals, comfort, convenience, and general welfare
2. The special use shall not be injurious to the uses and enjoyment of other property in the immediate vicinity for the purposes already permitted, not substantially diminish property values within the neighborhood
3. The establishment of a special use shall not impede the normal and orderly development and improvement of the surrounding property for uses already permitted
4. Adequate utilities, access ways, drainage, and other necessary facilities shall be provided
5. Adequate measures shall be taken to provide ingress and egress designed to minimize traffic congestion in the public streets
6. The special use shall comply with the objectives of the Wheaton Comprehensive Plan
7. The special use shall conform to the applicable requirements of the district in which it is located, as well as any other applicable requirements of this ordinance, except as may be varied by the Board or City Council.

(65 ILCS 5/Art. 11 Div. 13 heading)

DIVISION 13. ZONING

(65 ILCS 5/11-13-1) (from Ch. 24, par. 11-13-1)

Sec. 11-13-1. To the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted, and to insure and facilitate the preservation of sites, areas, and structures of historical, architectural and aesthetic importance; the corporate authorities in each municipality have the following powers:

- (1) to regulate and limit the height and bulk of buildings hereafter to be erected;
- (2) to establish, regulate and limit, subject to the provisions of Division 14 of this Article 11, the building or set-back lines on or along any street, traffic-way, drive, parkway or storm or floodwater runoff channel or basin;
- (3) to regulate and limit the intensity of the use of lot areas, and to regulate and determine the area of open spaces, within and surrounding such buildings;
- (4) to classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential, and other uses;
- (5) to divide the entire municipality into districts of such number, shape, area, and of such different classes (according to use of land and buildings, height and bulk of buildings, intensity of the use of lot area, area of open spaces, or other classification) as may be deemed best suited to carry out the purposes of this Division 13;
- (6) to fix standards to which buildings or structures therein shall conform;
- (7) to prohibit uses, buildings, or structures incompatible with the character of such districts;
- (8) to prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations lawfully imposed under this Division 13;
- (9) to classify, to regulate and restrict the use of property on the basis of family relationship, which family relationship may be defined as one or more persons each related to the other by blood, marriage or adoption and maintaining a common household;
- (10) to regulate or forbid any structure or activity which may hinder access to solar energy necessary for the proper functioning of a solar energy system, as defined in Section 1.2 of the Comprehensive Solar Energy Act of 1977;
- (11) to require the creation and preservation of

affordable housing, including the power to provide increased density or other zoning incentives to developers who are creating, establishing, or preserving affordable housing; and

(12) to establish local standards solely for the review of the exterior design of buildings and structures, excluding utility facilities and outdoor off-premises advertising signs, and designate a board or commission to implement the review process; except that, other than reasonable restrictions as to size, no home rule or non-home rule municipality may prohibit the display of outdoor political campaign signs on residential property during any period of time, the regulation of these signs being a power and function of the State and, therefor, this item (12) is a denial and limitation of concurrent home rule powers and functions under subsection (i) of Section 6 of Article VII of the Illinois Constitution.

The powers enumerated may be exercised within the corporate limits or within contiguous territory not more than one and one-half miles beyond the corporate limits and not included within any municipality. However, if any municipality adopts a plan pursuant to Division 12 of Article 11 which plan includes in its provisions a provision that the plan applies to such contiguous territory not more than one and one-half miles beyond the corporate limits and not included in any municipality, then no other municipality shall adopt a plan that shall apply to any territory included within the territory provided in the plan first so adopted by another municipality. No municipality shall exercise any power set forth in this Division 13 outside the corporate limits thereof, if the county in which such municipality is situated has adopted "An Act in relation to county zoning", approved June 12, 1935, as amended. Nothing in this Section prevents a municipality of more than 112,000 population located in a county of less than 185,000 population that has adopted a zoning ordinance and the county that adopted the zoning ordinance from entering into an intergovernmental agreement that allows the municipality to exercise its zoning powers beyond its territorial limits; provided, however, that the intergovernmental agreement must be limited to the territory within the municipality's planning jurisdiction as defined by law or any existing boundary agreement. The county and the municipality must amend their individual zoning maps in the same manner as other zoning changes are incorporated into revised zoning maps. No such intergovernmental agreement may authorize a municipality to exercise its zoning powers, other than powers that a county may exercise under Section 5-12001 of the Counties Code, with respect to land used for agricultural purposes. This amendatory Act of the 92nd General Assembly is declarative of existing law. No municipality may exercise any power set forth in this Division 13 outside the corporate limits of the municipality with respect to a facility of a telecommunications carrier defined in Section 5-12001.1 of the Counties Code.

Notwithstanding any other provision of law to the contrary, 30 days prior to the issuance of any permits for a new telecommunications facility within 1.5 miles of a

municipality, the telecommunications carrier constructing the facility shall provide written notice of its intent to construct the facility. The notice shall include, but not be limited to, the following information: (i) the name, address, and telephone number of the company responsible for the construction of the facility, (ii) the address and telephone number of the governmental entity that is to issue the building permit for the telecommunications facility, (iii) a site plan and site map of sufficient specificity to indicate both the location of the parcel where the telecommunications facility is to be constructed and the location of all the telecommunications facilities within that parcel, and (iv) the property index number and common address of the parcel where the telecommunications facility is to be located. The notice shall not contain any material that appears to be an advertisement for the telecommunications carrier or any services provided by the telecommunications carrier. The notice shall be provided in person, by overnight private courier, or by certified mail to all owners of property within 250 feet of the parcel in which the telecommunications carrier has a leasehold or ownership interest. For the purposes of this notice requirement, "owners" means those persons or entities identified from the authentic tax records of the county in which the telecommunications facility is to be located. If, after a bona fide effort by the telecommunications carrier to determine the owner and his or her address, the owner of the property on whom the notice must be served cannot be found at the owner's last known address, or if the mailed notice is returned because the owner cannot be found at the last known address, the notice requirement of this paragraph is deemed satisfied. For the purposes of this paragraph, "facility" means that term as it is defined in Section 5-12001.1 of the Counties Code.

If a municipality adopts a zoning plan covering an area outside its corporate limits, the plan adopted shall be reasonable with respect to the area outside the corporate limits so that future development will not be hindered or impaired; it is reasonable for a municipality to regulate or prohibit the extraction of sand, gravel, or limestone even when those activities are related to an agricultural purpose. If all or any part of the area outside the corporate limits of a municipality which has been zoned in accordance with the provisions of this Division 13 is annexed to another municipality or municipalities, the annexing unit shall thereafter exercise all zoning powers and regulations over the annexed area.

In all ordinances passed under the authority of this Division 13, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire municipality and the uses to which the property is devoted at the time of the enactment of such an ordinance. The powers conferred by this Division 13 shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted, but provisions may be made for the gradual elimination of uses, buildings and structures which are

incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such uses of unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted, if they are adaptable for permitted uses; and (c) for the elimination of such buildings and structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as the normal useful life of such buildings or structures.

This amendatory Act of 1971 does not apply to any municipality which is a home rule unit, except as provided in item (12).

(Source: P.A. 96-904, eff. 1-1-11; 97-496, eff. 8-22-11.)

(65 ILCS 5/11-13-1.1) (from Ch. 24, par. 11-13-1.1)

Sec. 11-13-1.1. The corporate authorities of any municipality may in its ordinances passed under the authority of this Division 13 provide for the classification of special uses. Such uses may include but are not limited to public and quasi-public uses affected with the public interest, uses which may have a unique, special or unusual impact upon the use or enjoyment of neighboring property, and planned developments. A use may be a permitted use in one or more zoning districts, and a special use in one or more other zoning districts. A special use shall be permitted only after a public hearing before some commission or committee designated by the corporate authorities, with prior notice thereof given in the manner as provided in Section 11-13-6 and 11-13-7. Any notice required by this Section need not include a metes and bounds legal description of the area classified for special uses, provided that the notice includes: (i) the common street address or addresses and (ii) the property index number ("PIN") or numbers of all the parcels of real property contained in the area classified for special uses. A special use shall be permitted only upon evidence that such use meets standards established for such classification in the ordinances, and the granting of permission therefor may be subject to conditions reasonably necessary to meet such standards. In addition, any proposed special use which fails to receive the approval of the commission or committee designated by the corporate authorities to hold the public hearing shall not be approved by the corporate authorities except by a favorable majority vote of all aldermen, commissioners or trustees of the municipality then holding office; however, the corporate authorities may by ordinance increase the vote requirement to two-thirds of all aldermen, commissioners or trustees of the municipality then holding office.

(Source: P.A. 97-336, eff. 8-12-11.)

(65 ILCS 5/11-13-1.5)

Sec. 11-13-1.5. Amateur radio communications; antenna regulations. Notwithstanding any provision of law to the contrary, no ordinance or resolution may be adopted or enforced by a municipality after the effective date of this amendatory Act of the 97th General Assembly that affects the placement, screening, or height of antennas or antenna support structures that are used for amateur radio communications unless the ordinance or resolution: (i) has a reasonable and clearly defined aesthetic, public health, or safety objective and represents the minimum practical regulation that is necessary to accomplish the objectives; and (ii) reasonably accommodates amateur radio communications.

A municipality may not regulate the antennas or antenna support structures that are used for amateur radio communications in a manner inconsistent with this Section. This Section is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 97-720, eff. 6-29-12.)

(65 ILCS 5/11-13-2) (from Ch. 24, par. 11-13-2)

Sec. 11-13-2. The corporate authorities in each municipality which desires to exercise the powers conferred by this Division 13, or who have exercised such power and desire to adopt a new ordinance, shall provide for a zoning commission with the duty to recommend the boundaries of districts and appropriate regulations to be enforced therein. The commission shall be appointed by the mayor or president, subject to confirmation by the corporate authorities. The commission shall prepare a tentative report and a proposed zoning ordinance for the entire municipality. After the preparation of such a tentative report and ordinance, the commission shall hold a hearing thereon and shall afford persons interested an opportunity to be heard. Notice of the hearing shall be published at least once, not more than 30 nor less than 15 days before the hearing, in one or more newspapers published in the municipality, or, if no newspaper is published therein, then in one or more newspapers published in the county in which the municipality is located and having a general circulation within the municipality. The notice shall state the time and place of the hearing and the place where copies of the proposed ordinance will be accessible for examination by interested persons. The hearing may be adjourned from time to time.

Within 30 days after the final adjournment of the hearing the commission shall make a final report and submit a proposed ordinance for the entire municipality to the corporate authorities. The corporate authorities may enact the ordinance with or without change, or may refer it back to the commission for further consideration. The zoning commission shall cease to exist upon the adoption of a zoning ordinance for the entire municipality.

(Source: P.A. 80-452.)

(65 ILCS 5/11-13-3) (from Ch. 24, par. 11-13-3)

Sec. 11-13-3. (a) All ordinances passed under the terms of this Division 13 shall be enforced by those officers of the municipality that are designated by ordinance.

(b) In municipalities having a population of more than 500,000 the city council may provide for the appointment of a board of appeals consisting of 5 members to serve respectively for the following terms: one for one year, one for 2 years, one for 3 years, one for 4 years, and one for 5 years, the successor to each member so appointed to serve for a term of 5 years.

(c) The city council in cities and the president and board of trustees in villages and incorporated towns, having a population of less than 500,000, may provide for the appointment of a board of appeals consisting of 7 members to serve respectively for the following terms: one for one year, one for 2 years, one for 3 years, one for 4 years, one for 5 years, one for 6 years, and one for 7 years, the successor to each member so appointed to serve for a term of 5 years.

(d) In any municipality with a population under 5,000 that has an appointed board of appeals, a proposition to elect the board of appeals at large shall be submitted to the electors as provided in this subsection.

Electors of the municipality equal to not less than 10% of the total vote cast for all candidates for mayor or president in the last preceding municipal election for that office may petition for the submission to a vote of the electors of the municipality the proposition whether the board of appeals shall be elected at large. The petition shall be filed with the municipal clerk in accordance with the general election law. The clerk shall certify the proposition to the proper election authorities who shall submit the proposition at an election in accordance with the general election law.

The proposition shall be in substantially the following form: "Shall the city (or village or incorporated town) of (insert name) elect the zoning board of appeals at large instead of having an appointed board of appeals?"

If a majority of those voting on the proposition vote in favor of it, then the board of appeals shall be elected at large at the next general municipal election held at least 120 days after the referendum approval. At the initial election, 4 members shall be elected for 2-year terms and 3 members shall be elected for 4-year terms; thereafter all terms shall be for 4 years. Upon the election and qualification of the initial elected board of appeals, the terms of all sitting members of the board of appeals shall expire.

(e) One of the members of an appointed board shall be named as chairman at the time of his or her appointment. If members are elected, the members shall select a chairman. The amount of compensation to be paid to members, if any, shall be fixed by the corporate authorities. The appointing authority has the power to remove any appointed member for cause and after public hearing. Vacancies shall be filled for the unexpired term of the member whose place has become vacant.

Vacancies shall be filled by the appointing authority in the case of an appointed board or by those who would otherwise be the appointing authority in the case of an elected board. All meetings of the board of appeals shall be held at the call of the chairman and at other times as the board may determine. The chairman, or in his or her absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating that fact, and shall also keep records of its examinations and other official actions. No hearing shall be conducted without a quorum of the board being present. A quorum shall consist of a majority of all the members. Any absent member who certifies that he or she has read the transcript of the proceedings before the board may vote upon any question before the board. Every rule or regulation and its amendment or repeal and every order, requirement, decision, or determination of the board shall immediately be filed in the office of the board and shall be a public record.

(f) In all municipalities the board of appeals shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of any ordinance adopted under this Division 13.

(g) In all municipalities the board of appeals shall also hear and decide all matters referred to it or upon which it is required to pass under such an ordinance. The concurring vote of 3 members of the board, in municipalities having a population of more than 500,000, and of 4 members of the board, in municipalities having a population of less than 500,000, is necessary to reverse any order, requirement, decision, or determination of such an administrative official, to decide in favor of the applicant any matter upon which it is required to pass under such an ordinance or to effect any variation in the ordinance, or to recommend any variation or modification in the ordinance to the corporate authorities. (Source: P.A. 87-535.)

(65 ILCS 5/11-13-3.1) (from Ch. 24, par. 11-13-3.1)

Sec. 11-13-3.1. In municipalities of less than 500,000 inhabitants no change shall be made in the zoning ordinance nor shall any zoning variation be granted within 6 months after the date upon which an official plan is adopted by the corporate authorities unless such change in the zoning ordinance or such variation is approved by a two-thirds vote of the corporate authorities or the zoning board of appeals then holding office, as the case may be.

(Source: Laws 1967, p. 3425)

(65 ILCS 5/11-13-4) (from Ch. 24, par. 11-13-4)

Sec. 11-13-4. In municipalities of 500,000 or more population, the regulations authorized by this Division 13 may be varied in their application only by the board of appeals of

the municipality, subject to the power of the corporate authorities to prohibit, in whole or in part, the granting of variations in respect to the classification, regulation and restriction of the location of trades and industries and the location of buildings designed for specified industrial, business, residential and other uses. Variations shall be permitted by the board of appeals only when they are in harmony with the general purpose and intent of the regulations and only in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of those regulations relating to the use, construction, or alteration of buildings or structures or the use of land. In its consideration of the standards of practical difficulties or particular hardship, the board of appeals shall require evidence that (1) the property in question cannot yield a reasonable return if permitted to be used only under the conditions allowed by the regulations in that zone; and (2) the plight of the owner is due to unique circumstances; and (3) the variation, if granted, will not alter the essential character of the locality. A variation shall be permitted only if the evidence, in the judgment of the board of appeals, sustains each of the 3 conditions enumerated. The corporate authorities may provide general or specific rules implementing, but not inconsistent with, the rules herein provided to govern determinations of the board of appeals. A decision of the board of appeals shall not be subject to review, reversal or modification by the corporate authorities but shall be judicially reviewable under the provisions of Section 11-13-13.

(Source: P.A. 82-430.)

(65 ILCS 5/11-13-5) (from Ch. 24, par. 11-13-5)

Sec. 11-13-5. In municipalities of less than 500,000 population, the regulations authorized by this Division 13 may provide that the board of appeals or corporate authorities may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained in cases where there are practical difficulties or particular hardship in the way of carrying out the strict letter of any of those regulations relating to the use, construction, or alteration of buildings or structures or the use of land. If the authority to determine and approve variations is vested in the board of appeals it shall be exercised in accordance with the conditions prescribed in Section 11-13-4, subject to the power of the corporate authorities to prohibit, in whole or in part, the granting of variations in respect to the classification, regulation and restriction of the location of trades and industries and the location of buildings designed for specified industrial, business, residential and other uses. If the power to determine and approve variations is reserved to the corporate authorities, it shall be exercised only by the adoption of ordinances. However, no such variation shall be made by the corporate authorities as specified without a hearing before the board of appeals.

(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-6) (from Ch. 24, par. 11-13-6)

Sec. 11-13-6. No variation shall be made by the board of appeals in municipalities of 500,000 or more population or by ordinance in municipalities of lesser population except in a specific case and after a public hearing before the board of appeals of which there shall be a notice of the time and place of the hearing published at least once, not more than 30 nor less than 15 days before the hearing, in one or more newspapers published in the municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the municipality which is published in the county where the municipality is located. This notice shall contain the particular location for which the variation is requested as well as a brief statement of what the proposed variation consists. Any notice required by this Section need not include a metes and bounds legal description of the location for which the variation is requested, provided that the notice includes: (i) the common street address or addresses and (ii) the property index number ("PIN") or numbers of all the parcels of real property contained in the area for which the variation is requested.

(Source: P.A. 97-336, eff. 8-12-11.)

(65 ILCS 5/11-13-7) (from Ch. 24, par. 11-13-7)

Sec. 11-13-7. In addition to the notice requirements otherwise provided for in this Division 13, in municipalities of 500,000 or more population, an applicant for variation or special use shall, not more than 30 days before filing an application for variation or special use with the board of appeals, serve written notice, either in person or by registered mail, return receipt requested, on the owners, as recorded in the office of the recorder of deeds or the registrar of titles of the county in which the property is located and as appears from the authentic tax records of such county, of all property within 250 feet in each direction of the location for which the variation or special use is requested; provided, the number of feet occupied by all public roads, streets, alleys and other public ways shall be excluded in computing the 250 feet requirement. The notice herein required shall contain the address of the location for which the variation or special use is requested, a brief statement of the nature of the requested variation or special use, the name and address of the legal and beneficial owner of the property for which the variation or special use is requested, a statement that the applicant intends to file an application for variation or special use and the approximate date on which the application will be filed. If, after a bona fide effort to determine such address by the applicant for variation or special use, the owner of the property on which the notice is served cannot be found at his or her last known address, or the mailed notice is returned because the owner cannot be found at the last known address, the notice requirements of

this sub-section shall be deemed satisfied. In addition to serving the notice herein required, at the time of filing application for variation or special use, the applicant shall furnish to the board of appeals a complete list containing the names and last known addresses of the owners of the property required to be served, the method of service and the names and last known addresses of the owners of the service and the names and addresses of the persons so served. The applicant shall also furnish a written statement certifying that he or she has complied with the requirements of this subsection. The board of appeals shall hear no application for variation or special use unless the applicant for variation or special use furnishes the list and certificate herein required. The board of appeals shall, not more than 30 days nor less than 15 days before the hearing at which the application for variation or special use is to be considered, send written notice to the persons appearing on the list furnished by the applicant, which notice shall contain the time and place of the hearing, the address of the location for which the variation or special use is requested and the name and address of the applicant for variation or special use and a brief statement of the nature of the variation or special use requested. Any notice required herein need not include a metes and bounds legal description of the property for which the variation or special use is requested, provided that the notice includes: (i) the common street address or addresses and (ii) the property index number ("PIN") or numbers of all the parcels of real property contained in the area for which the variation or special use is requested.

Any property owner within the above stated 250 feet notice requirement, who entered his or her appearance and objected at the board of appeals hearing, and who shows that his or her property will be substantially affected by the outcome of the decision of the board may, without proof of any specific, special, or unique damages to himself or herself or his or her property or any adverse effect upon his property from the proposed variation or special use, seek judicial relief from any order or decision of the board of appeals under the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto. If the board of appeals determines that the property of any such owner will not be substantially affected by the outcome of the decision of the board, such owner may initiate or join in judicial review under the Administrative Review Law, as provided in this Section.

(Source: P.A. 97-336, eff. 8-12-11.)

(65 ILCS 5/11-13-7a) (from Ch. 24, par. 11-13-7a)

Sec. 11-13-7a. Zoning variation and special use applicants and property owners, as set forth in Section 11-13-7 of this Act, shall have the following rights, in addition to any others they may possess in law, at any hearing before a board of appeals:

(a) to have subpoenas issued for persons to appear at board of appeals' hearings and for examination of documents by

the person requesting the subpoena either before or at board of appeals hearings subject to the limitations in this Section. The board of appeals shall issue subpoenas as requested by zoning variation and special use applicants and by property owners within the terms of Section 11-13-7. Subpoenas shall only be enforceable against persons or for documents which have a substantial evidentiary connection with (i) the property for which a zoning variation or special use is requested, (ii) facts which would support or negate the requisite legal standards for granting a zoning variation or special use, and (iii) facts which support or negate the conclusion that property within the 250 feet notice requirement of Section 11-13-7 will be substantially affected by the outcome of the decision of the board. All matters relating to subpoenas concerning a particular zoning variation or special use case, including all enforcement and motions to quash, shall be heard in a single action, however, the court obtaining jurisdiction over any such matter may retain jurisdiction until the disposition of the case by the board of appeals. Service of such subpoenas shall be made in the same manner as summons in a civil action.

(b) To cross examine all witnesses testifying.

(c) To present witnesses on their behalf.

Property owners within the terms of Section 11-13-7 who object to the zoning application or special use application may, upon request, be granted 1 continuance for the purpose of presenting evidence to rebut testimony given by the applicant. The date of such continued hearing shall be in the discretion of the board of appeals.

This amendatory act of 1973 is not a limit upon any municipality which is a home rule unit.

(Source: P.A. 79-1363.)

(65 ILCS 5/11-13-8) (from Ch. 24, par. 11-13-8)

Sec. 11-13-8. In municipalities of 500,000 or more population, when any zoning ordinance, rule or regulation is sought to be declared invalid by means of a declaratory judgment proceeding, not more than 30 days before filing suit for a declaratory judgment the person filing such suit shall serve written notice in the form and manner and to all property owners as is required of applicants for variation in Section 11-13-7, and shall furnish to the clerk of the court in which the declaratory judgment suit is filed, and at the time of filing such suit, the list of property owners, the written certificate and such other information as is required in Section 11-13-7 to be furnished to the board of appeals by an applicant for variation. A property owner entitled to notice who shows that his property will be substantially affected by the outcome of the declaratory judgment proceeding may enter his appearance in the proceeding, and if he does so he shall have the rights of a party. The property owner shall not, however, need to prove any specific, special, or unique damages to himself or his property or any adverse effect upon his property from the declaratory judgment proceeding.

(Source: P.A. 76-583.)

(65 ILCS 5/11-13-9) (from Ch. 24, par. 11-13-9)

Sec. 11-13-9. The provisions of an amendatory Act of 1955, which was approved June 30, 1955 and which was Senate Bill No. 328 of the Sixty-Ninth General Assembly and which amended certain provisions now contained in Section 11-13-4 through 11-13-8, shall not affect the validity of any variations approved by the corporate authorities or by the board of appeals and in force prior to July 1, 1955.  
(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-10) (from Ch. 24, par. 11-13-10)

Sec. 11-13-10. In municipalities of less than 500,000 population, where a variation is to be made by ordinance, upon the report of the board of appeals, the corporate authorities, by ordinance, without further public hearing, may adopt any proposed variation or may refer it back to the board for further consideration, and any proposed variation which fails to receive the approval of the board of appeals shall not be passed except by the favorable vote of two-thirds of all aldermen or trustees of the municipality.  
(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-11) (from Ch. 24, par. 11-13-11)

Sec. 11-13-11. Every variation or special use, whether made by the board of appeals directly, or by an ordinance after a hearing before the board of appeals, shall be accompanied by findings of facts and shall refer to any exhibits containing plans and specifications for the proposed use or variation, which shall remain a part of the permanent records of the board of appeals. The findings of facts shall specify the reason or reasons for making the variation.

The terms of the relief granted shall be specifically set forth in a conclusion or statement separate from the findings of fact of the board of appeals or ordinance. Property for which relief has been granted shall not be used in violation of the specific terms of the board of appeals' findings of fact or ordinance, as the case may be, unless its usage is changed by further findings of fact of a board of appeals or additional ordinances.

(Source: P.A. 76-584.)

(65 ILCS 5/11-13-12) (from Ch. 24, par. 11-13-12)

Sec. 11-13-12. An appeal to the board of appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality. The appeal shall be taken within 45 days of the action complained of by filing, with the officer from whom the appeal is taken and with the board of appeals a notice of appeal, specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting

the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of appeals, after the notice of appeal has been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In this event the proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a circuit court on application and on notice to the officer from whom the appeal is taken, and on due cause shown.

The board of appeals shall fix a reasonable time for the hearing of the appeal and give due notice thereof to the parties and decide the appeal within a reasonable time. Upon the hearing, any party may appear in person or by agent or by attorney. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination as in its opinion ought to be made in the premises and to that end has all the powers of the officer from whom the appeal is taken.

(Source: P.A. 76-1507.)

(65 ILCS 5/11-13-13) (from Ch. 24, par. 11-13-13)

Sec. 11-13-13. All final administrative decisions of the board of appeals under this Division 13 shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(Source: P.A. 82-783.)

(65 ILCS 5/11-13-14) (from Ch. 24, par. 11-13-14)

Sec. 11-13-14. The regulations imposed and the districts created under the authority of this Division 13 may be amended from time to time by ordinance after the ordinance establishing them has gone into effect, but no such amendments shall be made without a hearing before some commission or committee designated by the corporate authorities. Notice shall be given of the time and place of the hearing, not more than 30 nor less than 15 days before the hearing, by publishing a notice thereof at least once in one or more newspapers published in the municipality, or, if no newspaper is published therein, then in one or more newspapers with a general circulation within the municipality. In municipalities with less than 500 population in which no newspaper is published, publication may be made instead by posting a notice in 3 prominent places within municipality. In case of a written protest against any proposed amendment of the regulations or districts, signed and acknowledged by the owners of 20% of the frontage proposed to be altered, or by the owners of 20% of the frontage immediately adjoining or across an alley therefrom, or by the owners of the 20% of the frontage directly opposite the frontage proposed to be

altered, is filed with the clerk of the municipality, the amendment shall not be passed except by a favorable vote of two-thirds of the aldermen or trustees of the municipality then holding office. In such cases, a copy of the written protest shall be served by the protestor or protestors on the applicant for the proposed amendments and a copy upon the applicant's attorney, if any, by certified mail at the address of such applicant and attorney shown in the application for the proposed amendment. Any notice required by this Section need not include a metes and bounds legal description, provided that the notice includes: (i) the common street address or addresses and (ii) the property index number ("PIN") or numbers of all the parcels of real property contained in the affected area.

(Source: P.A. 97-336, eff. 8-12-11.)

(65 ILCS 5/11-13-14.1) (from Ch. 24, par. 11-13-14.1)

Sec. 11-13-14.1. Notwithstanding any other provision to the contrary in this Division 13:

(A) The corporate authorities of any municipality may by ordinance establish the position of hearing officer and delegate to a hearing officer the authority to: (i) conduct any public hearing -- other than a public hearing provided for in Section 11-13-2 -- required to be held under this Division 13 in connection with applications for any special use, variation, amendment or other change or modification in any ordinance of the municipality adopted pursuant to this Division 13; and (ii) hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Division 13.

(B) When a hearing officer is designated to conduct a public hearing in a matter otherwise required to be heard in accordance with this Division 13 by some commission or committee designated by the corporate authorities of the municipality: (i) notice of such hearing shall be given in the same time and manner as is provided by this Division 13 for the giving of notice of hearing when any such matter is to be heard by some commission or committee designated by the corporate authorities; (ii) the hearing officer shall exercise and perform the same powers and duties as such commission or committee is required to exercise and perform when conducting a public hearing in any such matter; and (iii) the hearing officer shall render a written recommendation to the corporate authorities within such time and in such manner and form as the corporate authorities shall require.

(C) When a hearing officer is designated to conduct a public hearing in a matter otherwise required to be heard in accordance with this Division 13 by the board of appeals, or when a hearing officer is designated to hear and decide appeals from and review any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Division 13: (i) notice of hearing shall be given in the same time and manner as is provided by this Division 13 for the

giving of notice of hearing when any such matter is to be heard by the board of appeals; (ii) the hearing officer in passing upon and determining any matter otherwise within the jurisdiction of the board of appeals shall be governed by all of the standards, rules and conditions imposed by this Division 13 to govern the board of appeals when it passes upon and determines any such matter; and (iii) the hearing officer shall exercise and perform all of the powers and duties of the board of appeals in the same manner and to the same effect as provided in this Division 13 with respect to the board of appeals, provided that:

1. When the hearing officer is passing upon an application for variation or special use and the power to determine and approve such variation or special use is reserved to the corporate authorities, then upon report of the hearing officer the corporate authorities may by ordinance without further public hearing adopt any proposed variation or special use or may refer it back to the hearing officer for further consideration, and any proposed variation or special use which fails to receive the approval of the hearing officer shall not be passed except by the favorable vote of 2/3 of all alderman or trustees of the municipality;

2. When the hearing officer is passing upon an application for variation or special use and the power to determine and approve such variation or special use is not reserved to the corporate authorities, or when the hearing officer is hearing and deciding appeals from or reviewing any order, requirement, decision or determination made by an administrative official charged with the enforcement of any ordinance adopted pursuant to this Division 13, the determination made by the hearing officer with respect to any such matter shall constitute a final administrative decision which is subject to judicial review pursuant to the provisions of the "Administrative Review Law", as now or hereafter amended.

(D) The corporate authorities of the municipality may provide general or specific rules implementing but not inconsistent with the provisions of this Section, including rules relative to the time and manner in which hearing officers are designated to conduct public hearings and rules governing the manner in which such hearings are conducted and matters heard therein passed upon and determined.

(E) Hearing officers shall be appointed on the basis of training and experience which qualifies them to conduct hearings, make recommendations or findings of fact and conclusions on the matters heard and otherwise exercise and perform the powers, duties and functions delegated in accordance with this Section. Hearing officers shall receive such compensation as the corporate authorities of the municipality shall provide, and any municipality may establish a schedule of fees to defray the costs of providing a hearing officer.

(F) This Section is intended to furnish an alternative or supplemental procedure which a municipality in its discretion may provide for hearing, determining, reviewing and deciding matters which arise under any ordinance adopted by the municipality pursuant to this Division 13, but nothing in this Section shall be deemed to limit or prevent the use of any

existing procedure available to a municipality under this Division 13 for hearing, approving or denying applications for a special use, variation, amendment or other change or modification of any such ordinance, or for hearing and deciding appeals from and reviewing any order, requirement, decision or determination made by an administrative official charged with the enforcement of any such ordinance.  
(Source: P.A. 84-960.)

(65 ILCS 5/11-13-15) (from Ch. 24, par. 11-13-15)

Sec. 11-13-15. In case any building or structure, including fixtures, is constructed, reconstructed, altered, repaired, converted, or maintained, or any building or structure, including fixtures, or land, is used in violation of an ordinance or ordinances adopted under Division 13, 31 or 31.1 of the Illinois Municipal Code, or of any ordinance or other regulation made under the authority conferred thereby, the proper local authorities of the municipality, or any owner or tenant of real property, within 1200 feet in any direction of the property on which the building or structure in question is located who shows that his property or person will be substantially affected by the alleged violation, in addition to other remedies, may institute any appropriate action or proceeding (1) to prevent the unlawful construction, reconstruction, alteration, repair, conversion, maintenance, or use, (2) to prevent the occupancy of the building, structure, or land, (3) to prevent any illegal act, conduct, business, or use in or about the premises, or (4) to restrain, correct, or abate the violation. When any such action is instituted by an owner or tenant, notice of such action shall be served upon the municipality at the time suit is begun, by serving a copy of the complaint on the chief executive officer of the municipality, no such action may be maintained until such notice has been given.

In any action or proceeding for a purpose mentioned in this section, the court with jurisdiction of such action or proceeding has the power and in its discretion may issue a restraining order, or a preliminary injunction, as well as a permanent injunction, upon such terms and under such conditions as will do justice and enforce the purposes set forth above.

If an owner or tenant files suit hereunder and the court finds that the defendant has engaged in any of the foregoing prohibited activities, then the court shall allow the plaintiff a reasonable sum of money for the services of the plaintiff's attorney. This allowance shall be a part of the costs of the litigation assessed against the defendant, and may be recovered as such.

An owner or tenant need not prove any specific, special or unique damages to himself or his property or any adverse effect upon his property from the alleged violation in order to maintain a suit under the foregoing provisions.

Except in relation to municipality-owned property, this Section does not authorize any suit against a municipality or its officials for any act relating to the administration,

enforcement, or implementation of this Division or any ordinance, resolution, or other regulation adopted pursuant to this Division.

(Source: P.A. 100-595, eff. 6-29-18.)

(65 ILCS 5/11-13-16) (from Ch. 24, par. 11-13-16)

Sec. 11-13-16. All zoning ordinances and regulations adopted prior to January 1, 1942, by any municipality pursuant to the provisions of "An Act to confer certain additional powers upon city councils in cities and presidents and boards of trustees in villages and incorporated towns concerning buildings and structures, the intensity of use of lot areas, the classification of trades, industries, buildings, and structures, with respect to location and regulation, the creation of districts of different classes, the establishment of regulations and restrictions applicable thereto, the establishment of boards of appeals and the review of the decisions of such boards by the court", approved June 28, 1921, as amended, and all committees, commissions, boards, and officers designated or appointed by any municipality pursuant to the provisions of that Act, or pursuant to the provisions of any ordinance or regulations adopted under that Act, shall be recognized, considered, and treated as having been properly adopted, designated, established, or appointed under this Division 13.

(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-17) (from Ch. 24, par. 11-13-17)

Sec. 11-13-17. In addition to all rights and powers conferred by this Division 13, the corporate authorities in each municipality may acquire by purchase, condemnation or otherwise any buildings or structures which do not conform to the standards fixed by the corporate authorities pursuant to Section 11-13-1, and all land which is necessary or appropriate for the rehabilitation or redevelopment of any area blighted by substandard buildings or structures; may remove or demolish all substandard buildings and structures so acquired; may hold and use any remaining property for public purposes; and may sell, lease or exchange such property as is not required for public purposes, subject to the provisions of the existing zoning ordinance.

(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-18) (from Ch. 24, par. 11-13-18)

Sec. 11-13-18. All testimony by witnesses in any hearing provided for in this Division 13 shall be given under oath.

(Source: Laws 1961, p. 576.)

(65 ILCS 5/11-13-19) (from Ch. 24, par. 11-13-19)

Sec. 11-13-19. Except as otherwise provided in this section, the corporate authorities shall cause to be published

no later than March 31 of each year a map clearly showing the existing zoning uses, divisions, restrictions, regulations and classifications of such municipality for the preceding calendar year. The first map published in 1960 shall reflect all zoning uses, divisions, restrictions, regulations and classifications in effect on and prior to December 31, 1959. If in any calendar year after the first map is published there are no changes in zoning uses, divisions, restrictions, regulations and classifications in such municipality, no map shall be published for such calendar year.

The map published by the corporate authorities shall be the official zoning map. The corporate authorities may establish a fee to be charged any person desiring a copy of such map. Such fee shall be paid to the appropriate zoning officer and shall be applied to defray the cost of publication of the official map.

(Source: Laws 1963, p. 3136.)

(65 ILCS 5/11-13-20) (from Ch. 24, par. 11-13-20)

Sec. 11-13-20. In any hearing before a zoning commission, board of appeals, or commission or committee designated pursuant to Section 11-13-14, any school district within which the property in issue, or any part thereof, is located shall have the right to appear and present evidence.

(Source: Laws 1963, p. 2259.)

(65 ILCS 5/11-13-22)

Sec. 11-13-22. Public hearing procedures for municipalities of less than 500,000. In a municipality of less than 500,000 inhabitants, the corporate authorities may adopt or authorize the zoning board of appeals and any other board, commission, or committee that conducts public hearings under this Division to adopt rules of procedures governing those public hearings. The rules of procedures may concern participation in public hearings and the participants' rights to cross examine witnesses and to present testimony and evidence, and any other relevant matter.

(Source: P.A. 97-552, eff. 8-25-11.)

(65 ILCS 5/11-13-25)

Sec. 11-13-25. Actions subject to de novo review; due process.

(a) Any decision by the corporate authorities of any municipality, home rule or non-home rule, in regard to any petition or application for a special use, variance, rezoning, or other amendment to a zoning ordinance shall be subject to de novo judicial review as a legislative decision, regardless of whether the process in relation thereto is considered administrative for other purposes. Any action seeking the judicial review of such a decision shall be commenced not later than 90 days after the date of the decision.

(b) The principles of substantive and procedural due process apply at all stages of the decision-making and review

of all zoning decisions.

(Source: P.A. 94-1027, eff. 7-14-06; 95-843, eff. 1-1-09.)

(65 ILCS 5/11-13-26)

Sec. 11-13-26. Wind farms. Notwithstanding any other provision of law:

(a) A municipality may regulate wind farms and electric-generating wind devices within its zoning jurisdiction and within the 1.5 mile radius surrounding its zoning jurisdiction. There shall be at least one public hearing not more than 30 days prior to a siting decision by the corporate authorities of a municipality. Notice of the hearing shall be published in a newspaper of general circulation in the municipality. A commercial wind energy facility owner, as defined in the Renewable Energy Facilities Agricultural Impact Mitigation Act, must enter into an agricultural impact mitigation agreement with the Department of Agriculture prior to the date of the required public hearing. A commercial wind energy facility owner seeking an extension of a permit granted by a municipality prior to July 24, 2015 (the effective date of Public Act 99-132) must enter into an agricultural impact mitigation agreement with the Department of Agriculture prior to a decision by the municipality to grant the permit extension. A municipality may allow test wind towers to be sited without formal approval by the corporate authorities of the municipality. Test wind towers must be dismantled within 3 years of installation. For the purposes of this Section, "test wind towers" are wind towers that are designed solely to collect wind generation data.

(b) A municipality may not require a wind tower or other renewable energy system that is used exclusively by an end user to be setback more than 1.1 times the height of the renewable energy system from the end user's property line. A setback requirement imposed by a municipality on a renewable energy system may not be more restrictive than as provided under this subsection. This subsection is a limitation of home rule powers and functions under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(Source: P.A. 99-123, eff. 1-1-16; 99-132, eff. 7-24-15; 99-642, eff. 7-28-16; 100-598, eff. 6-29-18.)

(65 ILCS 5/11-13-27)

Sec. 11-13-27. Special provisions relating to public schools.

(a) In exercising the powers under this Division with respect to public school districts, a municipality shall act in a reasonable manner that neither regulates educational activities, such as school curricula, administration, and staffing, nor frustrates a school district's statutory duties.

This subsection (a) is declarative of existing law and does not change the substantive operation of this Division.

(b) In processing zoning applications from public school districts, a municipality shall make reasonable efforts to streamline the zoning application and review process for the school board and minimize the administrative burdens involved in the zoning review process, including, but not limited to, reducing application fees and other costs associated with the project of a school board to the greatest extent practicable and reflective of actual cost but in no event more than the lowest fees customarily imposed by the municipality for similar applications, limiting the number of times the school district must amend its site plans, reducing the number of copies of site plans and any other documents required to be submitted by the municipality, and expediting the zoning review process for the purpose of rendering a decision on any application from a school district within 90 days after a completed application is submitted to the municipality. (Source: P.A. 99-890, eff. 8-25-16.)



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# Transcript of Hearing

**Date:** November 5, 2019

**Case:** St. Charles Plan Commission

**Planet Depos**

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BEFORE THE PLAN COMMISSION  
OF THE CITY OF ST. CHARLES

-----x  
In Re: General Amendment -- :  
Procedures, Findings of :  
Fact and Recommendations :  
for Special Uses and :  
Amendments to Special :  
Uses. :  
-----x

HEARING  
St. Charles, Illinois 60174  
Tuesday, November 5, 2019  
7:34 p.m.

Job No.: 218475B  
Pages: 1 - 31  
Reported by: Joanne E. Ely, CSR, RPR

1 HEARING, held at the location of:

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3 ST. CHARLES CITY HALL

4 2 East Main Street

5 St. Charles, Illinois 60174

6 (630) 377-4400

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13 Before Joanne E. Ely, a Certified Shorthand  
14 Reporter, and a Notary Public in and for the State  
15 of Illinois.

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1 PRESENT:

2 TODD WALLACE, Chairman

3 JENNIFER BECKER, Member

4 JEFFREY FUNKE, Member

5 JAMES HOLDERFIELD, Member

6 SUZANNE MELTON, Member

7 TOM PRETZ, Member

8 PETER VARGULICH, Member

9 ALSO PRESENT:

10 RUSSELL COLBY, Community Development  
11 Manager

12 ELLEN JOHNSON, Planner

13 RACHEL HITZEMANN, Planner

14 MONICA HAWK, Development Engineer

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1 P R O C E E D I N G S

2 CHAIRMAN WALLACE: No. 8 is general  
3 amendments, City of St. Charles, Chapter 17.04,  
4 Administration, regarding procedures, findings of  
5 fact, and recommendations for special uses and  
6 amendments to special uses.

7 Is the applicant here?

8 (Witness sworn.)

9 CHAIRMAN WALLACE: Thank you. Go ahead.

10 MR. COLBY: Thank you. So this  
11 application is regarding the findings of fact for  
12 special uses, which we were just discussing a  
13 specific application. But this is an application  
14 that's been filed by the City based on the  
15 discussion that occurred regarding the issue of  
16 recreational cannabis dispensaries.

17 At the time the Plan Commission reviewed  
18 the general amendment application, it was  
19 identified that there was a discrepancy with our  
20 ordinance in terms of it referencing a requirement  
21 to comply with Federal law as a part of the  
22 special use findings of fact.

23 This issue was brought up to the planning  
24 and development committee when they were reviewing

1 the general amendment for recreational cannabis,  
2 and they voted 7 to 2 to direct staff to file an  
3 application to remove this Federal law requirement  
4 from the special use findings of fact. So this is  
5 the application that's before the Plan Commission  
6 this evening.

7 There's some information provided in the  
8 staff memo about the Illinois Municipal Code and  
9 the State statute that creates the ability for the  
10 City to designate certain uses as special uses  
11 under the zoning ordinance.

12 There's a specific section of the statute  
13 that's referenced that states: "A special use  
14 shall be permitted only upon evidence that such  
15 use meets standards established for such  
16 classification in the ordinances," specifically  
17 the ordinances of the city that is creating the  
18 zoning ordinance standards.

19 Essentially, this statement and the other  
20 requirements in this section of the statute allow  
21 each municipality to create their own specific  
22 list of special use findings that they think are  
23 appropriate for their community and to identify  
24 which items they think are important through those

1 findings.

2 The statute does not require that the City  
3 necessarily make any type of finding with regard  
4 to Federal law or State law, rather it's meant for  
5 the City to be able to review based on what we  
6 think are important criteria for a project.

7 So there is a letter that has been  
8 distributed from Nick Peppers, who is the new City  
9 attorney. He has reviewed this information and  
10 concurs with the information that was prepared in  
11 the staff memo, that we're not required to have  
12 conformance with State and Federal law as part of  
13 a finding for this special use, and he has noted  
14 that traditionally local municipal zoning  
15 standards for special use wouldn't include these  
16 types of conclusive findings.

17 So as part of the research for this, staff  
18 tried to determine how this requirement -- how and  
19 why this requirement was added to our zoning  
20 ordinance. The best we can determine is that it  
21 was added back when the City updated its full  
22 zoning ordinance as a comprehensive update in  
23 2006, and it was added at that time into the  
24 requirements for PUDs.

1           Later when those special use findings were  
2 reorganized in 2008, this specific finding was  
3 shifted into the special use list, so it applied  
4 to all special uses, including PUDs.

5           The only reason we could come up with as  
6 to explain why this was possibly added was that  
7 during the period that the ordinance was being  
8 drafted in the early 2000s, there was some case  
9 law that came out of the Illinois Supreme Court  
10 about how special use findings -- or special use  
11 public hearings were to be conducted and some  
12 procedural requirements that really heightened the  
13 level of sensitivity and the due process that had  
14 to be recognized during the special use public  
15 hearings that would take place in front of bodies  
16 like the Plan Commission because that hearing was  
17 being used as a record of the evidence that was  
18 used in the City's decision whether to approve or  
19 deny a special use application.

20           So it really elevated the status of the  
21 public hearing that was held and potentially  
22 opened the public hearing procedures and  
23 requirements to more scrutiny than historically  
24 had been applied to special use hearings.

1           So it's possible that the City's legal  
2           counsel at the time considered that information  
3           and suggested that to be more conservative, that  
4           additional requirements be added into the special  
5           use findings out of the interest of protecting the  
6           City's legal interests.

7           But the State statute has since been  
8           amended so that those requirements don't apply any  
9           longer. The State statute, essentially, has gone  
10          back to how the State historically viewed special  
11          use hearings, that that was the evidence that the  
12          City would consider; but if there was a challenge,  
13          then the City could present its own case in court,  
14          if the decision was challenged. The special use  
15          public hearing has lesser importance than it did  
16          from a legal standpoint.

17          So we looked also at other area  
18          municipalities to see how they deal with the  
19          special use standards in terms of whether they  
20          reference either State or Federal requirements,  
21          and we surveyed a number of them. I think there's  
22          17 or 18 that are listed in the table in the staff  
23          memo.

24          And for the most part, there's really only

1 one other municipality that includes the State and  
2 Federal requirement, and that's Batavia. It's  
3 possible that Batavia may have mirrored our  
4 ordinance when they updated theirs, so that may be  
5 why they have very similar language to what's in  
6 ours. But we did observe that it's more common to  
7 have reference to compliance with local code  
8 requirements.

9 And also we were looking to see whether it  
10 was common to require all findings be in the  
11 affirmative with a special use, and I think the  
12 overwhelming majority of the communities we  
13 surveyed all require that all findings be in the  
14 affirmative.

15 So what we're proposing to do is to remove  
16 this reference to both Federal and State law. The  
17 reason we included State law is really the same  
18 concern with Federal law. We don't necessarily  
19 have the ability, as a municipality, to reach a  
20 conclusive finding about whether a project is  
21 compliant with all State and Federal requirements  
22 because we don't necessarily enforce those  
23 requirements or have the ability to interpret the  
24 statutes that would apply.

1           Additionally, when a project is before the  
2 Plan Commission, it's at a zoning review stage.  
3 It's not necessarily at a stage of approval where  
4 it's completely finalized in terms of having all  
5 other permits that might be required from other  
6 levels of government, or it may not have full  
7 plans for the construction of the buildings and  
8 final engineering plans for the site.

9           So it's really more of a preliminary  
10 level, which is why it makes more sense to look  
11 primarily at zoning requirements which would apply  
12 to how a site is being designed and laid out but  
13 not necessarily down to the construction detail.

14           So the text I proposed would change this  
15 finding F to state that the proposed special use  
16 conforms to all applicable provisions of the  
17 St. Charles Municipal Code and meets or exceeds  
18 all applicable provisions of this title, this  
19 title being the zoning ordinance, except as may be  
20 varied pursuant to a special use for planned unit  
21 development.

22           So this, essentially, says that the  
23 finding that would be made as far as special use  
24 is that what's being proposed complies with all

1 the City's Municipal Codes, except where there  
2 were some exceptions that were granted through a  
3 PUD.

4 So in situations where we have a special  
5 use that's being requested in an existing planned  
6 unit development, or this would also apply to a  
7 planned unit development application because the  
8 special use findings are a subset of the PUD  
9 criteria that are listed in the ordinance. So  
10 this may also be applied to a PUD itself.

11 I think that's the summary of the  
12 application. I can take any questions.

13 CHAIRMAN WALLACE: I have a question  
14 first. If the Plan Commission recommends denial  
15 and specifies one particular -- I mean, just like  
16 we just did, and we specify one particular finding  
17 of fact we found in the negative, what is the  
18 obligation of the City Council? I mean ours is a  
19 recommendation. City Council doesn't have any  
20 obligation to follow that recommendation.

21 So if we were to find in the negative on  
22 this particular finding of fact as it's written, I  
23 don't understand why taking away information as  
24 part of our recommendation serves anyone. I don't

1 know. What are your thoughts on that?

2 MR. COLBY: Yeah. Well, I think the  
3 question is does it make sense for the Plan  
4 Commission, as a local zoning body, to be  
5 considering whether a project is complying with  
6 the laws and requirements of higher government  
7 jurisdictions if, you know, we don't necessarily  
8 have the ability to compose or enforce those  
9 regulations. So it's a little bit outside of the  
10 scope of what you typically would review.

11 And as part of the public hearing, when  
12 the City establishes that as a finding, we're  
13 taking on some obligation that we're expecting  
14 that the applicant will substantiate that  
15 information and that the City would review that  
16 information and reach a conclusion on it.

17 And I think the concern would be that we  
18 don't really have the ability to really review  
19 that thoroughly and make a conclusion on it  
20 because it is such a specific conclusive finding.  
21 Versus the other findings that are in the list  
22 that truly relate to the impacts of the use and  
23 the appropriateness of the use, this is really  
24 more directly kind of code interpretation for

1 codes that are not -- codes that the City  
2 enforces.

3 CHAIRMAN WALLACE: Questions?

4 Well, I guess the other thing that occurs  
5 to me -- I mean there are two other thoughts that  
6 I have. And I understand that the Plan Commission  
7 or City staff is not under any obligation to  
8 investigate any and all Federal laws to ensure  
9 that the use is in compliance; but on the flip  
10 side of that, if there is a Federal law that we  
11 know it violates, you know, is it really within  
12 our jurisdiction to be able to approve a zoning  
13 application where it's knowingly violative of  
14 Federal law?

15 MR. COLBY: Well, I think the issue is  
16 that it's outside of our jurisdiction.

17 CHAIRMAN WALLACE: True. But it is  
18 information that's known to us. And I guess I  
19 would compare it to an environmental issue. I've  
20 read EPA regulations and they are -- if there's  
21 anything more complex than the IRS code, it's  
22 the EPA.

23 There's no way that we can know in a given  
24 application whether or not something is in

1 compliance with any and all EPA regulations; but  
2 if we know that it is not in compliance, is it  
3 proper for the Plan Commission to allow that use  
4 to exist if it's in active conflict with Federal  
5 law?

6 MR. COLBY: I think you could reach that  
7 finding or that conclusion under one of the other  
8 findings because you really need to show -- you  
9 know, the idea of a special use is that they have  
10 some unique impacts on surrounding properties,  
11 that they may not be appropriate at all locations  
12 in the zoning district, but it may be appropriate  
13 at some locations.

14 So the hearing process is really there to  
15 verify that based on the specific proposal and the  
16 site layout and the impacts of that specific  
17 project, that it is or is not appropriate for that  
18 location, so.

19 CHAIRMAN WALLACE: So are you saying that  
20 property adjoining a property that violates  
21 Federal law, there would be a negative impact on  
22 property value or --

23 MR. COLBY: Well, what I was suggesting  
24 is, like, with your example of the EPA. If we

1 knew that there was some environmental issue that  
2 wasn't being addressed, that has a potential  
3 negative impact on a surrounding property.

4 If we can show that that's the case,  
5 that's appropriate to include in one of the other  
6 findings because that then relates back to why it  
7 has a negative impact on surrounding properties,  
8 or it may not be appropriate at that location of  
9 the zoning district.

10 CHAIRMAN WALLACE: So I guess by the same  
11 token, if there was a property that was used,  
12 let's say for cannabis sales, I mean, there could  
13 be a potentially negative use on the surrounding  
14 properties in the event that ATF helicopters  
15 swooped in and -- I mean, I don't know.

16 I think that that's kind of a stretch. I  
17 don't know. I'm always wary of changing something  
18 just based on -- something that has been  
19 longstanding based on one particular instance  
20 where it has presented a problem because of the  
21 unintended consequences.

22 I don't know. I can't -- I haven't been  
23 able to brainstorm enough about what other types  
24 of unintended consequences there may be.

1           MR. COLBY: I will comment, though, that  
2 this requirement has only been in the City's  
3 ordinance since 2006, and we can't verify as to  
4 why specifically it was added. Prior to that,  
5 there was nothing similar to that in the City code  
6 back to 1960.

7           CHAIRMAN WALLACE: It seems to be common  
8 sense, you know, that we want to make sure that  
9 the uses that we're approving are legal uses, you  
10 know.

11           MR. COLBY: Well, but keep in mind also,  
12 though, this applies just to special uses, this  
13 list. So we have all sorts of other uses  
14 identified in the zoning ordinance that don't  
15 necessarily have to meet this finding. So in a  
16 way it's sort of singling out special uses to meet  
17 this standard, but not other uses. They wouldn't  
18 have to go through this type of review.

19           CHAIRMAN WALLACE: We don't have issues  
20 with the other uses. I mean, haberdasheries  
21 aren't in violation of any Federal law if they're  
22 an allowed use under our zoning ordinance.

23           MR. COLBY: That's true, but it could  
24 change. I mean, we don't necessarily know at all

1 times that everything that's in our code in terms  
2 of uses is always going to be in compliance  
3 with --

4 CHAIRMAN WALLACE: I guess that's why this  
5 could be considered to be a safety net, my  
6 opinion.

7 MEMBER VARGULICH: Russ, I have a  
8 question.

9 From the process, okay, if we approve a  
10 special use under this new language, so we're not  
11 addressing State and Federal regulations. So now  
12 it's approved. It moves through the next steps in  
13 the process. So now it's going to be built.  
14 Okay.

15 So as part of the building permit process,  
16 do we require anyone, you know, getting a building  
17 permit to address State or Federal laws relating  
18 to their building?

19 MR. COLBY: Yes. To the extent that we're  
20 aware of a requirement that applies based on the  
21 type of project that they're constructing, or if  
22 it's in a certain area, like a floodplain, yes, to  
23 the extent that that is in effect.

24 I think the trouble we have with doing

1 this as part of the special use process is  
2 typically these projects aren't far enough along  
3 for them to have secured the approvals of those  
4 higher levels of government where they're  
5 required.

6 MEMBER VARGULICH: I would disagree with  
7 Todd. I think that to address the concern that  
8 Mr. Wallace has identified about, Wow, we can use  
9 Federal and State things as a safety net for this  
10 process.

11 I think that would be -- when all the  
12 construction documents are submitted for the use  
13 and you understand exactly what they're building  
14 and the detail of their building; and if there's  
15 something that's tentative -- or not tentative,  
16 but something that's unique that requires special  
17 types of permits -- so, like, if it's a gas  
18 station, right. There's specific laws related to  
19 tanks and things like that that have nothing to do  
20 with a zoning issue as an example.

21 So there's all these State laws that  
22 address life safety, fire, flood, in case of tank  
23 ruptures, you know, all these different things  
24 that they have to do, which are State laws that

1 would apply, that have to do with zoning or how  
2 we're looking at it from a zoning relationship as  
3 far as setbacks or buffering or, you know, those  
4 kinds of things. So I think --

5 CHAIRMAN WALLACE: Can I just say. I'm  
6 looking more in a general sense to the use because  
7 what you're talking about is regulations that have  
8 to be followed for users, strict users to do what  
9 they can legally do. They have to comply with A,  
10 B, and C. But if the user and the use itself is  
11 not allowed, you know, if gas stations were not  
12 allowed, well, I mean --

13 MEMBER VARGULICH: But isn't a gas station  
14 location -- independent of zoning district. Okay.  
15 If it falls under our list as a special use, then  
16 by its nature, it gets reviewed as a special use  
17 in relationship to the zoning districts and/or  
18 uses adjacent to them or within proximity to or  
19 those kinds of things.

20 So I think that's what we're charged with,  
21 which is again relating to our local ordinances.  
22 You know, do we think that a gas station in  
23 relationship to a neighborhood -- I mean, as an  
24 example, in our city is the Mobil station on Main

1 Street that's, whatever, 13th Street or something  
2 like that, 12th Street, 11th. Okay. It's  
3 directly adjacent to residential uses. It would  
4 be a B-2 use and, you know, whatever that is.

5 And so would you approve that going  
6 forward if it went away, or if it sold to somebody  
7 else. I don't know. That would be a good  
8 discussion for us to have as it relates to that  
9 use and that type of use adjacent to residential  
10 uses. But right now it's conforming because it's  
11 a grandfathered relationship.

12 But would people like that going forward?  
13 I don't know. We'd probably have a debate about  
14 that. So I am personally okay with all these  
15 changes.

16 CHAIRMAN WALLACE: All right. Any other  
17 questions? Discussion?

18 MEMBER MELTON: So I'm struggling because  
19 I know this came up because of the cannabis;  
20 correct? So I'd like to ask you the question what  
21 else is out there that is like that, that doesn't  
22 conform with Federal but conforms with the State  
23 that would be a similar issue or item that I  
24 could, you know, kind of plug into the equation of

1 how that would work out here.

2 MR. COLBY: Well, I think some of the  
3 examples that Peter offered are situations where  
4 there may be State requirements, for example, that  
5 would apply to a certain use that we can't  
6 necessarily verify at the time it's going through  
7 a zoning hearing that they're complying with.

8 Like, you know, for example, the  
9 underground storage tanks and the review that  
10 might be associated with those. That type of  
11 information is typically not available at the time  
12 that the application is being reviewed.

13 So it's difficult to reach a conclusive  
14 finding on that.

15 MEMBER VARGULICH: I would also offer that  
16 if you look at that chart that they prepared in  
17 comparing St. Charles with all these other  
18 communities, that other than Batavia, we're the  
19 only one that has a State and Federal review  
20 process or, you know --

21 CHAIRMAN WALLACE: Maybe because  
22 (inaudible.)

23 MEMBER VARGULICH: Very possible but I  
24 think given the 17 or whatever other communities

1 that are listed, they all have -- any communities  
2 that are bigger than us, like as an example,  
3 Arlington Heights. They are, like, what, 55-,  
4 60,000 people, which is twice our size.

5 So I would think that at some level as you  
6 get larger, you think about these  
7 interrelationships between different laws and  
8 different levels of laws, State, local, Federal;  
9 and if you're not willing to make that part of the  
10 special use process, there's probably a good  
11 reason not to.

12 CHAIRMAN WALLACE: I have a suggestion,  
13 and Russ, I want to hear your take on it. I know  
14 how it's worded now and how you propose it to be  
15 worded; but what if instead of saying, The  
16 proposed special use conforms with all existing  
17 Federal, State, and local legislation and  
18 regulation, what if it said that it conforms to  
19 all relevant Federal and State legislation and  
20 regulation known to the Plan Commission at the  
21 time of the public hearing.

22 MR. COLBY: I agree that would make it  
23 more workable from the Plan Commission's  
24 standpoint. You know, it's still -- we would

1 still then have potentially inherent conflict with  
2 a use that we had already identified within our  
3 code as being allowed somewhere, subjected to this  
4 review which it could not meet, which was the  
5 issue that, you know, you raised during the public  
6 hearing.

7 So to some extent, that would clarify the  
8 level to which the Plan Commission would need to  
9 review things that are before them.

10 Now, you know, there may be some question  
11 as to what's relevant and to how -- and to what  
12 level would that need to be reviewed but --

13 CHAIRMAN WALLACE: Well, take out relevant  
14 and just say Federal and State legislation and  
15 regulation known to the Plan Commission. I mean  
16 that would take it out of the universe of the  
17 Plan -- that we are not in charge or enforcing or  
18 policing Federal laws, yeah. But if there is  
19 something that is known to the Plan Commission,  
20 then that's something that should be relevant in  
21 our considerations.

22 MR. COLBY: I think the struggle might be  
23 that, you know, just basing that on what the  
24 knowledge of the Plan Commission is at the time on

1 a given topic, if that's fair and equitable to  
2 applicants. You know, we do our best to try and  
3 flag those things to the extent that we can in the  
4 review process, but it's not foolproof.

5 CHAIRMAN WALLACE: All right. Any other  
6 questions? Comments? Okay.

7 (No response.)

8 CHAIRMAN WALLACE: Let's hear a motion to  
9 close the public hearing.

10 MEMBER FUNKE: I'll make that motion.

11 CHAIRMAN WALLACE: All right.

12 MEMBER VARGULICH: Second.

13 CHAIRMAN WALLACE: It's been moved and  
14 seconded. Any discussion on the motion? It's the  
15 motion to close the public hearing.

16 (No response.)

17 CHAIRMAN WALLACE: Becker.

18 MEMBER BECKER: Yes.

19 CHAIRMAN WALLACE: Funke.

20 MEMBER FUNKE: Yes.

21 CHAIRMAN WALLACE: Pretz.

22 MEMBER PRETZ: I'm going to say no.

23 CHAIRMAN WALLACE: Holderfield.

24 MEMBER HOLDERFIELD: Yes.

1 CHAIRMAN WALLACE: Melton.

2 MEMBER MELTON: Yes.

3 CHAIRMAN WALLACE: Vargulich.

4 MEMBER VARGULICH: Yes.

5 CHAIRMAN WALLACE: Wallace, yes.

6 All right. Now, we move on to 8 -- it  
7 says 8d. It probably should be 8b, but that's  
8 okay, which is discussion and recommendation for  
9 this application.

10 Is there a motion or any discussion?

11 MEMBER VARGULICH: I just have a question  
12 for Tom. Why did you want to keep the public  
13 hearing open?

14 MEMBER PRETZ: Only because I don't  
15 feel -- I don't feel I have enough understanding  
16 and a clear answer to this amendment and the  
17 impact that it has on the City for future special  
18 uses and that.

19 So I'm kind of in an uncomfortable  
20 position related to that, and maybe for me more  
21 discussion would help me. So for closing the  
22 public hearing -- and I understand we can't debate  
23 this for many more meetings and kind of move along  
24 here. But that's the reason. It's just that I

1 feel uncomfortable with it. I don't have a clear  
2 sense of exactly how I should vote for this.

3 MEMBER VARGULICH: And the letter from  
4 Peppers didn't help.

5 MEMBER PRETZ: Yeah. I read through the  
6 letter and that, yeah.

7 CHAIRMAN WALLACE: All right. Is there a  
8 motion?

9 MEMBER BECKER: I move to recommend  
10 approval of the amendment as proposed in the staff  
11 report -- let me see -- amendment to Chapter  
12 17.04, Administration, Section 17.04.330, special  
13 uses and amendments to special uses as follows:  
14 Conformance with codes: That the proposed special  
15 use conforms to all applicable provisions of the  
16 St. Charles Municipal Code and meets or exceeds  
17 all applicable provisions of this title, except as  
18 may be varied pursuant to a special use for a  
19 planned unit development.

20 CHAIRMAN WALLACE: All right. Is there a  
21 second?

22 MEMBER FUNKE: I'll second.

23 CHAIRMAN WALLACE: All right. It's been  
24 moved and seconded to recommend approval as

1 provided in the staff report -- or as provided in  
2 the application, sorry.

3 Any discussion?

4 MEMBER BECKER: I really do think it's a  
5 self-policing thing as staff talked about, and I  
6 think that there's so many steps to an approval  
7 and entitlement and building process that missing  
8 something important would be part of that --  
9 identifying something important would be part of  
10 that; and I'm comfortable with removing the  
11 language knowing that it has to go through staff  
12 and all the other people that would be part of the  
13 process.

14 CHAIRMAN WALLACE: All right. Any other  
15 discussion?

16 (No response.)

17 CHAIRMAN WALLACE: All right. Seeing  
18 none.

19 Becker.

20 MEMBER BECKER: Yes.

21 CHAIRMAN WALLACE: Funke.

22 MEMBER FUNKE: Yes.

23 CHAIRMAN WALLACE: Pretz.

24 MEMBER PRETZ: I'm just going to say

1 present for now.

2 CHAIRMAN WALLACE: Holderfield.

3 MEMBER HOLDERFIELD: Yes.

4 CHAIRMAN WALLACE: Melton.

5 MEMBER MELTON: No.

6 CHAIRMAN WALLACE: Vargulich.

7 MEMBER VARGULICH: Yes.

8 CHAIRMAN WALLACE: And Wallace, no.

9 That motion does pass four yeses, three  
10 no's, and one present.

11 All right. And that concludes Item No. 8  
12 on your agenda.

13 Item 9, additional business from Plan  
14 Commission members or staff. Any additional  
15 business?

16 Do you guys need anything?

17 MR. COLBY: We're just trying to clarify  
18 the vote.

19 CHAIRMAN WALLACE: Oh, it was --

20 MR. COLBY: I think it was 4 to 2 with one  
21 voting present.

22 CHAIRMAN WALLACE: Oh, I'm sorry.

23 MEMBER VARGULICH: It's 4 to 2.

24 CHAIRMAN WALLACE: It was 4 to 2.

Transcript of Hearing  
Conducted on November 5, 2019

29

1 MEMBER BECKER: You were voting for Tim.

2 CHAIRMAN WALLACE: 4 to 2 with one  
3 present, sorry.

4 All right. Any additional business?

5 (No response.)

6 CHAIRMAN WALLACE: The weekly development  
7 report, you all hopefully are -- is everyone  
8 receiving that on Fridays in your e-mails. Okay.  
9 Good.

10 And meeting announcements, we have a  
11 November 19th, December 3rd, December 17th.

12 Is there anything besides that K-9 on the  
13 19th?

14 MR. COLBY: Yes.

15 CHAIRMAN WALLACE: Okay. So we won't be  
16 dependent upon that.

17 MR. COLBY: No.

18 CHAIRMAN WALLACE: All right. Good.

19 Public comment? We lost our public.

20 All right. Is there a motion to adjourn?

21 MEMBER HOLDERFIELD: So moved.

22 MEMBER FUNKE: Second.

23 CHAIRMAN WALLACE: Okay. Moved and  
24 seconded. All in favor.

1 (Ayes heard.)

2 CHAIRMAN WALLACE: Opposed.

3 (No response.)

4 CHAIRMAN WALLACE: The City of St. Charles

5 Plan Commission is adjourned at 8:07 p.m.

6 (Off the record at 8:07 p.m.)

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CERTIFICATE OF SHORTHAND REPORTER

I, Joanne E. Ely, Certified Shorthand Reporter No. 84-4169, CSR, RPR, and a Notary Public in and for the County of Kane, State of Illinois, the officer before whom the foregoing proceedings were taken, do certify that the foregoing transcript is a true and correct record of the proceedings, that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision, and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 6th day of November, 2019.

My commission expires: May 16, 2020

*Joanne E. Ely*



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Notary Public in and for the  
State of Illinois