

Chapter 5.2: Common Procedures

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5.201 Initial Land Use Proposal Review

- A. **Purpose.** The Initial Land Use Proposal Review is intended to allow the City Council to consider specific land uses for a particular location to help potential zoning/Comprehensive Plan applicants decide whether or not to proceed with submitting subsequent applications. Additionally, this Review allows the general public to participate in the City Council's discussion.
- B. **Applicability.** The Initial Land Use Proposal Review may be conducted to consider new uses of land that differ from what is prescribed for the subject property on the City's Comprehensive Plan Land Use Map and/or Official Zoning Map. This Review may be pursued at the option of the owner(s) of the subject property or by an interested party with consent of the owner(s). This Review shall not eliminate any other reviews/hearings of land use and or development proposals as specified in this Title or Title 11.
- C. **Application Submittal.**
 - 1. A request for Initial Land Use Proposal Review shall be filed with the Community Development Department on a form established by the Community Development Director.
 - 2. Information regarding the proposed land use that shall accompany the application form is limited to:
 - a. A statement identifying the basic land uses to be one or more of the following:
 - (1) Commercial

- (2) Residential (single, two family, or multiple family, with gross densities cited)
 - (3) Industrial
 - (4) Office
 - (5) Institutional
 - (6) Open Space
 - (7) Mixed use
- b. A site plan showing the basic layout of the subject property to include:
- (1) Identification of existing land uses on properties within 1,000 feet of the subject property
 - (2) Location(s) of the subject property's identified land use(s) as proposed in 5.201.C.2.a
 - (3) General transportation networks (streets, internal roadways, bicycle paths, trails, sidewalks) with potential connection points to the existing networks and/or adjacent properties
- c. There shall be no fee required with application submittal.

D. *Initial Land Use Proposal Review Meeting.*

- 1. The Community Development Director shall select a City Council Committee meeting date to conduct the Initial Land Use Proposal Review.
- 2. The applicant shall notify owners of property within 500 of the subject property of the time and date of the meeting. Said notice shall be sent via regular US Mail between 15 and 30 days before the scheduled Initial Land Use Proposal Review.
- 3. At the Committee meeting, the applicant shall make a 10 minute or less presentation to review the application material, after which the Committee may ask questions of the applicant.
- 4. After the applicant's presentation, Batavia staff may provide additional relevant information, not to exceed 10 minutes, after which, the Committee may ask questions of staff.
- 5. After staff's input the Committee shall allow up to 30 minutes for public comment.

6. After public comment, the Committee shall discuss issues of the proposal and provide general commentary to the applicant. No vote or straw poll is taken.

5.202 Proposed Development Plan Review

- A. ***Proposed Development Plan Requirements.*** Proposed Development Plan review is required, unless waived by the Community Development Director (Director) pursuant to Section 5.105.L for the following before an application will be accepted for processing:
 1. Comprehensive Plan Land Use or Transportation and Circulation Map Amendments.
 2. Preliminary subdivision plats.
 3. New vertical structures for Wireless Communication Facilities.
- B. ***Optional Review.*** An applicant for a project not requiring Proposed Development Plan review may request such review.
- C. ***Application Submittal.*** A request for Proposed Development Plan review shall be filed with the Community Development Department on a form established by the Director.
- D. ***Proposed Development Plan Meetings.*** City staff may meet with the applicant or representative to provide comments. Following the meeting, staff shall provide the applicant with a written summary of comments and place a copy of the comments in the project file.
- E. ***Fees.*** There shall be no fee for the initial Proposed Development Plan review. Subsequent Proposed Development Plan reviews are subject to a fee established by City Council ordinance.

5.203 Application Process

- A. ***Applications.*** Completed applications shall be submitted to the Community Development Department on a form established by the Director. Any of the following persons or entities may submit an application:
 1. The owner of the property.
 2. An agent authorized by the owner.
 3. A person acting under a purchase contract or exclusive option to purchase the property.
- B. ***Application Content.***

1. The Director shall specify the form and content of applications that are required pursuant to the Zoning Code. The Director may require additional supporting materials as part of the application, including but not limited to, legal descriptions, statements, photographs, plans, drawings, renderings, models, material samples and other items necessary to describe the existing situation and the proposed project.
 2. The applicant shall be responsible for the accuracy and completeness of all information submitted to the City. The Director may waive the submission of specific material or information if he finds it is not needed to reach a decision on the application.
- C. ***Determination of Completeness.*** After receiving an application accompanied by the required fee, the Director shall determine if the application is complete within 10 working days of the filing date. The Director shall notify the Applicant if the application is incomplete. If the application is incomplete, the City shall identify the items that must be filed to complete the application. After 30 days, incomplete applications may be discarded and the fee returned to the applicant.
- D. ***Concurrent Applications.*** When a project requires approvals under more than one section of the Zoning Code, the individual applications may be accepted for concurrent review.
- E. ***Inspection and Reproduction of Public Records.*** All applications that have been determined to be complete, including supporting materials, are public records. Public records may be reviewed and copied upon request during normal business hours. The applicant shall clearly label each page of copyrighted or trademarked materials, and such materials shall be available for public inspection, but copyrighted materials shall not be copied except as needed for City review.
- F. ***Inactive Applications.*** All applications shall be actively pursued to a decision. If no applicant activity has occurred on an application for 180 days, the application shall be determined to be inactive. Thirty (30) days prior to that date the staff shall notify the applicant in writing that the application will become inactive. If the applicant requests in writing that the Director extend the 180-day period, such request shall be accompanied by an explanation for the period of inactivity. The Director may grant an extension for up to 180 days for good cause if there is a reasonable belief that the application will be actively pursued during the extension period. If an extension is not approved, the application will be deemed withdrawn and the file shall be closed.

5.204 Fees and Fines

- A. ***Required Fees.*** All applications required by the Zoning Code shall be accompanied by the required fees set by ordinance of the City Council. Applications shall not be deemed complete without payment of the required fee.
- B. ***Fee Refunds.*** If an application is withdrawn prior to a decision, the applicant may be eligible for a refund of a portion of the fee. The amount of the refund shall be determined by the Director based on direct and indirect costs incurred by

the City through the date of withdrawal. Fee refunds shall not be made for applications that have been denied or determined to be inactive.

- C. **Fines.** All fines imposed by the City of Batavia for violations of a zoning ordinance, the Zoning Code, a conditional use ordinance, administrative approval, a variance, or a design review approval shall be established by either:
1. City Council ordinance, or
 2. The Hearing Officer

5.205 Neighborhood Meeting

- A. **Neighborhood Meeting Requirements.** At the discretion of the Director, applicants may be required to conduct a neighborhood meeting. The purpose of the meeting is to inform neighborhood residents about the proposed project. Prior to scheduling Plan Commission review, the applicant shall provide a report to the City explaining the method of meeting notification, list of attendees and a record of the proceedings.
- B. **Neighborhood Meeting Details.** The meeting shall be held at City Hall and shall be open to the public. The Director shall determine the method and extent of meeting notification. This may include sending notification to area residents and posting of a sign on the property. City staff may attend.

5.206 Public Notice

Prior to consideration of any action for which the Zoning Code requires notice pursuant to this section, notice shall be given in compliance with the following requirements:

- A. **Published Notice.** For Comprehensive Plan amendments, amendments to the zoning code text, amendments to a zoning ordinance or the Official Zoning Map, conditional use permits, zoning variances and appeals heard by the Zoning Board of Appeals, the Director shall prepare for publication a Notice of Public Hearing, to comply with the following requirements:
1. The notice shall be published at least 15 days prior to the date of the public hearing in a newspaper of general circulation within the City.
 2. The notice shall include a general description of the proposed project or action and the property included in the application.
 3. The notice shall specify the date, time, location, and purpose of the public hearing.
 4. The notice shall state the location and times at which the complete application and project file may be viewed by the public.
 5. The notice shall state that any interested person or authorized agent may appear and be heard.

6. Legal Description or PIN Number and Address if required by State Law.
- B. **Posting of Official Notice.** For applications for Comprehensive Plan amendments, amendments to the zoning code text, amendments to a zoning ordinance or the Official Zoning Map, conditional use permits, zoning variances and appeals heard by the Zoning Board of Appeals, the Director shall prepare a Notice of Public Hearing. The City shall post the notice at least 48 hours prior to the date of the public hearing at a public place within the City designated by City Council for posting of public notices.
- C. **Property Posting.** For applications requiring public notice pursuant to 5.205.D and 5.205.E the applicant shall post a sign on the subject property informing the public. The sign shall be subject to the following requirements:
1. **Time Required.**
 - a. Public Hearings: The sign shall be posted at least 15 days prior to the date of the public hearing, and shall be maintained in its original condition and location until the hearing.
 - b. Public Meetings: The sign shall be posted at least 10 days prior to the date of the public meeting, and shall be maintained in its original condition and location until the meeting.
 2. Posting, maintenance and removal of signs are the responsibility of the applicant. When a hearing or meeting is continued, the applicant shall update the sign to reflect the continued hearing or meeting date and time. Failure to remove the sign within 10 days of closing of the public hearing or meeting shall result in issuance of a notice of violation by the City.
 3. Size, color, content, and location of public hearing or meeting signs shall be designated by the Director. The signs shall be lettered and posted so that the following are legible from adjacent public rights of way: "City of Batavia," the action requested, the date, time, and place of the hearing or meeting.
 4. The applicant shall submit a signed affidavit of posting five business days prior to the public hearing or meeting.
 5. Failure of the applicant to provide evidence of posting shall result in a postponement of the public hearing or meeting.
- D. **Mailed Notice of Public Hearing.** For applications for Comprehensive Plan Land Use Map amendments other than the periodic update, rezoning, conditional use permits, zoning variances and appeals heard by the Zoning Board of Appeals, the Director shall prepare a Notice of Public Hearing. The notice shall be subject to the following requirements:

1. At least 15 days but not more than 30 days prior to the date of the public hearing, the applicant shall notify the following by first-class mail:
 - a. All property owners of record within 500 feet of the property, unless the Comprehensive Plan or other policy adopted by the City Council requires notification within a larger area.
 - b. The property owner if the application is initiated by a person other than the property owner.
 - c. All public agencies potentially affected by the action.
 2. The Director may require the applicant to send notice to property owners beyond the notification area set forth in Section 5.205.D.1.a if he determines the potential impact of the project extends beyond the required notification boundary.
 3. The notice shall be on a form prepared by the Director and completed by the applicant. A copy of the final notice shall be provided five business days prior to the public hearing.
 4. The applicant shall submit a signed affidavit of mailing prior to the public hearing. Failure of the applicant to provide the affidavit shall result in a postponement of the public hearing.
- E. ***Mailed Notice of Public Meeting.*** Applications for design review and preliminary subdivision plats of four or more lots shall require the Director to prepare a Notice of Public Meeting. The notice shall be subject to the following requirements:
1. At least 10 days but not more than 30 days prior to the date of the public meeting, the applicant shall notify the following by first-class mail:
 - a. All property owners of record within 500 feet of the property.
 - b. The property owner if the application is initiated by a person other than the property owner.
 - c. All public agencies potentially affected by the action.
 2. The Director may require the applicant to send notice to property owners beyond the notification area set forth in Section 5.205.E.1.a if he determines the potential impact of the project extends beyond the required notification boundary.
 3. The notice shall be on a form prepared by the Director and completed by the applicant. A copy of the final notice shall be provided five business days prior to the public meeting.

4. The applicant shall submit a signed affidavit of mailing prior to the public meeting. Failure of the applicant to provide the affidavit shall result in a postponement of the public meeting.

5.207 Public Hearing Procedures

A public hearing held pursuant to the Zoning Code shall comply with the following procedures:

A. Public Hearing Testimony

1. *Rights of All Persons.* Any interested person may appear at a public hearing and submit oral or written testimony related to the application, either individually or as a spokesman for a person, a group of people or an organization. Each person who appears at a public hearing shall sign in, identify himself, state an address and, if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.
2. *Time Limits.* The Mayor or Chair may establish reasonable time limits for individual testimony and may require that individuals with shared concerns select one or more spokespersons to present testimony on behalf of those individuals in order to minimize redundancy.
3. *Exclusion of Testimony.*
 - a. The Mayor or Chair may exclude testimony or evidence that is irrelevant, immaterial, or repetitious.
 - b. In the event any testimony or evidence is excluded as irrelevant, immaterial, or repetitious, the person offering such testimony or evidence shall have an opportunity to offer a written statement in regard to such testimony or evidence for the record. Such written statement shall be presented to the City Clerk within 3 working days of the hearing.

B. Order of Proceedings at Public Hearing. The order of the proceedings at the public hearing shall be as follows:

1. *Introduction of Item.* The Mayor or Chair shall introduce the item.
2. *Public Hearing.* The Mayor or Chair shall open the public hearing.
3. *Swearing of Witnesses.* The Mayor or Chair shall swear in persons wishing to speak a public hearing, other than staff.
4. *Staff Report.* Staff shall present a report, which includes a written recommendation, and shall respond to questions from the decision-making body.

5. *Applicant Presentation.* The applicant shall present the project, indicate concurrence or disagreement with advisory body or staff recommendations, and respond to questions from the body.
6. *Public Testimony.* Testimony will be accepted from those requesting to be heard, subject to the limitations of Section 5.206.A: Public Hearing Testimony. Witnesses opposing the application shall have the right to cross examine the applicant, City staff, and witnesses for the applicant. The applicant shall have the right to cross examine City staff and witnesses opposing the application.
7. *Applicant Response.* The Mayor or Chair may request the applicant to respond to testimony or evidence presented by the public or staff.
8. *Staff Response.* Staff and the City Attorney may provide information or clarification regarding matters raised during the public hearing.
9. *Continuance of Public Hearing or Meeting.* The body conducting the public hearing or meeting may by motion continue the public hearing to a fixed date, time, and place. In such event, no further notice need be given.
10. *Close of Public Hearing.* If not continued, the Mayor or Chair shall close the public hearing after approved motion to do so.
11. *Tabling.* The decision-making body conducting the public hearing may by motion table the public hearing. Any further public hearing on the matter shall not be conducted until notice is given in the same manner as for the initial hearing.
12. *Deliberation and Action.* The City Council, Zoning Board of Appeals, or Plan Commission, shall discuss the request and approve or recommend approval with or without modifications or conditions, or deny the request, unless it has been continued or tabled.

5.208 Findings Required

When making a decision to approve, approve with modifications and/or conditions, revoke, or deny any rezoning, conditional use permit, administrative use permit, or variance, the decision-making body shall make findings of fact required by the Zoning Code. Findings shall be based upon consideration of the application, plans, testimony, reports, and other materials that constitute the record and shall be in writing and included in the minutes. Draft findings shall be set forth in the staff report.

5.209 Administrative Procedures

Any person may examine an application and materials submitted in support of or in opposition to an application in the Community Development Department offices during normal business hours. Copies of such materials shall be made available at a reasonable cost to be established from time to time through City Council ordinance. Staff reports to

the Plan Commission, Zoning Board of Appeals, or City Council or Council committee(s) will not be made available to the public or applicants until they have been submitted to the body for which the reports were prepared.

5.2010 Final Decisions

- A. **City Council.** A final decision of the City Council shall be upon passage and approval of the ordinance or resolution as the case may be.
- B. **Zoning Board of Appeals, Plan Commission and Administrative Actions.** A final decision on those matters for which they have final authority shall be on the day of the action.

5.211 Procedures for Appeals

This section sets forth the procedures for appeals of decisions of the Plan Commission, Zoning Board of Appeals and administrative officers. Any decision within the authority of the decision-making body may be appealed, unless the Zoning Code provides that the decision is final.

A. Rights of Appeal.

Except as provided in this Section, appeals may be filed by:

- 1. The applicant on a matter that is the subject of a final decision by the Planning and Zoning Officer, Community Development Director, Plan Commission, or Zoning Board of Appeals.
- 2. The Mayor or a member of the City Council.
- 3. The City Administrator.

B. Filing of Appeal. An appeal shall be filed with the Community Development Department on a form established by the Director. The appeal shall set forth the decision or decisions being appealed and the grounds upon which the appeal is based. The appeal shall be accompanied by any applicable fees.

C. Time Limits for Appeal. All appeals shall be filed within 10 calendar days of the final decision. This only applies to appeals filed pursuant to the City appeal process. Appeals to the Circuit Court of final decisions of the City Council, Plan Commission, or Zoning Board of Appeals shall be pursuant to applicable provisions of the Illinois Municipal Code (65 ILCS 5/1-1-1, et seq) and/or the Illinois Code of Civil Procedure (735 ILCS 5/1-101, et seq).

D. Proceedings Stayed by Appeal. The timely filing of an appeal shall stay all proceedings in the matter appealed.

E. Transmission of Record. The Director shall forward the appeal and all other documents that constitute the record to the decision-making body.

- F. **Standards.** When reviewing any decision on appeal, the decision-making body shall use only the record of decision to determine if the decision shall be upheld, amended or reversed.
- G. **Hearing Body Action.** Public hearings shall be conducted in accordance with procedures set forth in Section 5.206: Public Hearing Procedures. In addition, the decision-making body may remand the matter to the original decision-making body for reconsideration, for additional information or to cure a deficiency in the record or proceeding. The decision-making body shall render its decision within 30 days of the date the hearing is closed unless State law requires a shorter deadline.

5.212 Procedures for Inspections

This section sets forth the procedures for inspections of construction that have received approval under this Title.

- A. **Inspections Pursuant to Issuance of a City of Batavia Building Permit.** Inspections for construction pursuant to issuance of a City of Batavia building permit shall be scheduled through, and conducted as part of the building permit inspection process, set forth in Title 9: Building Regulations.
- B. **Inspections of Construction Approved by Other Jurisdictions.** It shall be the responsibility of the applicant of the approved construction under this Title to schedule inspection of the property with the Planning and Zoning Officer in conjunction with the construction activity, before project completion. Any site conditions not in compliance shall be corrected according to conditions as approved under this Title. It shall be the responsibility of the same party to schedule re-inspection in the manner established herein.