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RESOLUTION NO. 1860

WHEREAS, the Albany City Council has previously followed procedural guidelines for conducting public hearings on land use matters; and

WHEREAS, it is in the best interest of all concerned parties to have such procedures in written form.

NOW, THEREFORE, BE IT RESOLVED by the Albany City Council that the attached conduct of hearings on Land Use Matters be adopted and incorporated as part of this resolution.

DATED THIS 23RD DAY OF MARCH, 1977.



MAYOR

ATTEST:



CITY RECORDER

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CONDUCT OF HEARINGS ON LAND USE MATTERS
BEFORE THE CITY COUNCIL

SCOPE: CONDUCT OF ALL HEARINGS HELD BY THE CITY COUNCIL PURSUANT TO THE CITY OF ALBANY ZONING ORDINANCE AS A RESULT OF AN APPLICATION OR PETITION HAVING BEEN FILED FOR A ZONE CHANGE OR APPEAL FROM PLANNING AND ZONING SHALL BE GOVERNED BY PROVISIONS HEREINAFTER SET FORTH.

I. RECORD OF PROCEEDINGS

- A. Record - The City Council shall cause a verbatim record of the proceedings to be made by stenographic or electronic means. It shall not be necessary to transcribe this record unless the cost of the transcription is paid by the person requesting the same.
- B. Exhibits - All exhibits received shall be marked so as to provide identification upon review.
- (1) Only evidence capable of being offered and incorporated in the record or reproduced for the record of the case shall be received.
 - (2) Evidence may be received subject to a later ruling as to admissibility.
 - (3) All exhibits received into evidence shall be retained by the City Council until the expiration of any applicable appeal period.
 - (4) After the expiration of any applicable appeal period, exhibits may be released upon the written request of the person or his agent who introduced the exhibit.

II. EVIDENCE

- A. Evidence to be Received - All evidence offered and not objected to may be received unless excluded by the City Council on its motion. All evidence received shall become a part of the record in the case.
- (1) Quality of Evidence - Evidence received at any hearing shall be of the quality that reasonable persons rely upon in the conduct of their business affairs.
 - (2) Objections - Objections to evidentiary offers may be made and shall be noted in the record. Evidence objected to may be received with rulings on its admissibility or exclusions to be made at the time a final order is issued.

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- (3) Limiting Evidence - The City Council may set reasonable time limits for all presentations and may exclude or limit cumulative, repetitious, or immaterial matter.
 - (4) Documentary Evidence - Documentary evidence may be received in the form of copies or excerpts or by incorporation by reference.
- B. Official Notice - The City Council may take official notice of the following:
- (1) All facts which are judicially noticeable; and
 - (2) The ordinances, resolutions, rules, regulations, and official policies of the City of Albany; and
 - (3) Matters officially noticed need not be established by evidence and may be considered by the City Council in the determination of the application.

III. BURDEN OF PROOF CRITERIA

- A. Burden of Proof - The burden of proof is placed upon the applicant. The more drastic the request or the greater the impact of the request in an area, the greater is the burden upon the applicant.
- (1) What Must Be Proved - The application must be supported by proof that:
 - a. The proposed action is consistent with the relevant elements, goals, and policies of City of Albany Comprehensive Plan;
 - b. That there is a public need for the proposed action;
 - c. That the public need will be best served by granting the application;
 - d. If other areas have been previously designated for use or development as requested in the application, then a showing of the necessity for introducing the proposed use into an area not previously contemplated and why the property owners there should bear the burden, if any, of introducing that proposal into their area.
- B. Additional Factors - The following criteria and factors are deemed relevant and material and shall be considered by the City Council in reaching their decision on an application:
- (1) Mistake in the planning or zoning for the property under consideration;
 - (2) Change of conditions in the character of the neighborhood in which the use or development is proposed.

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- (3) All factors relating to the question of public health, safety, and general welfare, including but not limited to the various characteristics of the area involved, the suitability of the area for particular land uses and improvements, present and prospective uses in the area, density of development, property values, the needs of economic enterprises in the future development of the area, access to particular sites in the area, the existence of natural resources in the area and their prospective utilization, and the public need for healthful, safe, aesthetic surroundings and conditions.

IV. EX PARTE CONTACTS BY CITY COUNCIL

A. Communications - The City Council shall not:

- (1) Communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate;
- (2) Views - Inspect the site with any party or his representative unless all parties are given an opportunity to be present.

V. GENERAL CONDUCT OF THIS HEARING

- A. Any person appearing before the City Council shall give his name and address for the records.
- B. Any person appearing before the City Council shall have the right to be represented by counsel.
- C. No person shall be disorderly, abusive, or disruptive of the orderly conduct of the hearing.
- D. No person shall present irrelevant statements or exhibits.
- E. The City Council may set time limits for all presentations and may exclude or limit cumulative, repetitious or immaterial matter.
- F. The City Council may, in their discretion, continue the hearing from time to time as necessary to gather additional information. If continued to a date certain, no additional notice need be given unless so ordered by the City Council.

VI. CONDUCT OF THE HEARING

A. The hearing shall be conducted in the following manner:

- (1) Commencement of Hearing - The Mayor shall commence the hearing and announce the nature and purpose of the hearing and summarize the rules for the conduct of the hearing.

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- (2) Staff Report - Presentation by Planning Staff summarizing the nature of the application explaining graphic or pictorial displays which are part of the record and a summary of the staff report.
 - (3) Area Advisory Committee - The representative of any area advisory committee within the affected area may present the committee's statement on the application, or any written comment by an area, advisory committee shall be made a part of the record.
 - (4) Proponents - The applicant shall appear, on his own behalf, or by a representative:
 - a. Upon failure of applicant or his representative to appear, or upon his express waiver of presenting testimony and evidence, the City Council shall consider the written application, plus staff, materials, as presenting the applicant's case.
 - b. Persons in favor of the applicant's proposal shall next be heard.
 - (5) Questions - Questioning of applicant and others in favor of the application shall be allowed only as provided in Subsection B of this Section.
 - (6) Opponents - Persons opposed to the application shall next be heard as follows:
 - a. Special organizations formed for the purpose of opposition to the application.
 - b. Persons who received or were entitled to receive notice of the hearing.
 - c. Other interested citizens.
 - (7) Petitions and Letters - Petitions and letters shall be made a part of the record.
 - (8) Questions - Questioning of opponents shall be allowed only as provided in Subsection B of this Section.
 - (9) Rebuttal - Allow the applicant or his representative to other testimony.
 - (10) Closing of Hearing - The Mayor shall close the hearing.
- B. Questioning of Parties - Questioning of speakers shall be conducted in the following manner:
- (1) A member of the City Council may ask any speaker such questions as he determines are necessary to clarify the application, comments, or exhibits.

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- (2) Neither counsel nor any other individual at the hearing shall have the right to directly question or cross-examine any speaker. A counsel or other individual shall, however, have the right to present questions, orally or in writing, to the City Council, who personally or through their designated representative may request an answer to such questions from any speaker.
 - (3) Those questioned shall be given a reasonable time to respond solely to the questions.
 - a. The Mayor may impose limits on questioning in the interests of:
 - i. Time limitations
 - ii. Fairness to participants
 - iii. The orderly conduct of the hearing
 - (4) Questions shall not be argumentative and shall be designed to clarify facts.

VII. DECISION AND REVIEW

- A. The City Council shall enter findings and conclusions based upon the record before it to justify its decision.