

CITY COUNCIL MEETING
(as pertains to BZA, PC, TR & Bldg. Comm.)
August 2, 2021

On August 2, 2021 a Special Joint meeting of all City Boards and Commissions met to discuss and adopt virtual meeting rules. Once the general meeting was called to order, each Board or Commission discussed and adopted virtual meeting rules.

Tom DeBaun: Okay we are live so I'll call to order the joint meeting of several boards and committees for August 2, 2021. We'll show that the Shelbyville Common Council is here. I'll turn it over to the respective boards. If you would please, come to the podium, state your name and the respective board that you represent. Call your meeting to order as well. Mike, I'll start with the Plan Commission.

The Plan Commission was called to order.

Mike Evans: Mike Evans, Shelbyville Plan Commission. I now call this meeting to order. Can you do a voice roll call of members or are we not doing that yet?

Jenny Meltzer: Inaudible comment.

Evans: Please.

Adam Rude: Mr. Nolley - here, Mr. Lux - here, Mr. Martin - here, Mr. Cassidy - here, Mr. Kuntz - here, Mr. Evans - here, Ms. Bowen - here.

DeBaun: Thank you very much. We'll now call to order the Board of Zoning Appeals meeting. The chair of that, Mr. Chris, sorry.

Chris Clark: Chris Clark, Board of Zoning Appeals. Call this meeting to order.

Rude: Mr. Clark - here, Mr. Bradburn - here, Mr. Lisher - here, Mr. Cassidy - here. That's it.

Meltzer: Did we do Building Commission?

DeBaun: Do not see the Building Commission in the room.

Meltzer: No Building Commission.

Meltzer: So virtual meetings; the Indiana legislature changed the law in April on an emergency condition and then it formally changed on July 1st. We are under an executive order from the governor. We continue to be under an executive order from the governor that puts us under an emergency condition which is how Tyson appeared tonight. So that was a great example of what a meeting looks like when we're under an emergency disaster order by the governor or the

mayor. The purpose of the law, we're gonna go through the purpose, who it applies to, the emergency that we just did, what's gonna change when we're not under an emergency, some ideas of best practices that I've been suggested to me and multiple continuing legal education seminars that I've done on this and then for each board we'll do a discussion and a vote. So Indiana Open Door Law, the legislature has stated that the purpose of this is to allow for the public to be able to fully participate and know what their elected officials and their appointed boards and commissions are doing. All meetings of the governing bodies and public agencies must be open at all times for the purpose of permitting the public to observe and record them. Notice it's observe and record. It is not participate. The only time of participation of the public is required is at an actual public hearing. So this new law applies to basically every single board and commission but you may have noticed Redevelopment Commission is not here tonight and neither is the Airport Board. The Airport Board's under their own set of statutes and the Redevelopment Commission is actually under 2 sets of statutes - this plus another one. So they have their own (?) that need to apply. If I say governing board, that is all of you. That's how you're referred to in the Open Door Law. So if I use that terminology, I'll try not to, but if I do, that's what it means. So when we're in a declared emergency so that can be a public health emergency like we are right now, you all the members are not required to be present. So technically not only Tyson could've appeared virtually tonight but every single city council member could've appeared virtually tonight and we could've done the meeting 100% virtual. For practical purposes the Clerk-Treasurer would still probably need to be here or the mayor or someone to run the technology to allow us to do 100% virtual meeting. The every single person that appears virtually counts towards the quorum. All votes have to be taken by roll call and then the minutes will identify then which types of technology we used be virtual which you heard the mayor do tonight. For purposes of a local emergency, the mayor can declare one for 7 days and then common council would have to agree to a longer time period. So the governor can do it for a month. Mayor can do it for 7 days. The things to consider - the public has to be able to attend and observe. And notice that's not participate. So there's some definitions thrown up from Miriam Webster dictionary which is where the court would look to when they're not defined by code. These terms are not defined in the Indiana Code. Your meeting minutes are going to have to state, so for tonight the meeting minutes are going to have to state specifically every single person that appeared in person and who appeared virtually. We did a roll call vote which you saw. Like I said, unless it's a public hearing, then the public can simply view this on Facebook. If it's a public hearing, you're gonna have a completely different set of things to consider and procedures that you're going to need to implement to insure that the public can actually then appear and participate. And the last thing to consider when we're in an emergency is consistency across the city. If for no other reason than your city attorney would really like a consistent set of rules but not just myself but the public in general. If we're in a public emergency, the public would probably like to be able to simply call the Clerk-Treasurer's office and it's the same set of rules across all boards and commissions. So the public will know, okay we're in a emergency, this is what where I'm going to be able see it. So all of them will be on Facebook, for example. And then for non emergencies, so once the governor's executive order expires, right now it's set to expire August 30th. I don't know if they'll continue it or not. But once it does expire, you're under a different section of the code and to do virtual meetings for anyone to participate virtually, you have to pass a policy which is all the resolutions that I

brought to you today. The reason we did it today was 'cause his order was set to expire on July 31st. His order that expired on June 30th and on May 30th stated that he was not inclined to renew it again so at some point his inclination to not renew it again will actually be seen and then we'll be under this where we need an actual resolution. Even with this policy, if we are not in an emergency situation, 50% of your members need to appear in person. It is my legal advice that even if 50% of your individuals do not equal a quorum, you should require (?) to meet in person and I will explain why here in a second but that's my advice. Right now all of your boards 50% does equal a quorum and so you can take action with Parks board 2 members. Plan Commission, you would need 5 to get to your 9. City Council, you need 4. And that's what's actually required to be in person and then who's in person and who's not in person also needs to be documented in minutes. For each and every single person, you have to attend at least 50% of the meetings in person. The statute's not 100% clear on it's says annually but that, I'm not clear if that means from January through December or if that means 50% if you look at any past 12 months, you need to be in person. The consensus is that it's January through December so 2021, once we're no longer under the executive order, you could (?) with 100% virtual up through August so that in the last four months you'll need to appear at 50% of those in person and that's for each and every single member. So 50% of your board needs to be in person and each member over the year needs to appear in person 50% of the time. There are exceptions to that - military service, illness or medical conditions, death of a relative, an emergency involving actual or threatened injury to a persons or person's property. And then the next point is that we need to be able to hear and see each other and so you saw that Tyson was up on the screen which means that when you are appearing virtually in a non-emergency situation you need to have your camera on. If you don't have your camera on, you are not appearing. You are not part of the quorum. If we can't see you, you don't count which also means that everyone should think about whether or not they have the technology at home to do this. You smart phone will do this on Zoom. It's an app. And then a roll call vote and it's simultaneously hearing and being seen so the member that's on, appearing virtually also then needs to be able to see everyone. So city council chambers are set up with the cameras so that Tyson could then see all of us. And here's why I think if for some reason you change your bylaws and make it so that more than 50% of you need to be present for a quorum why I would say that then you want a quorum in person. If for some reason Tyson had fallen off the phone call tonight and there was a technological failure, all of the votes tonight would've still counted because I had a quorum here present. If you had been 100% virtual and all the technology fell apart, none of the votes would've counted tonight and we would've had to re-notice the city council meeting for 48 hours from now and redo everything that we did. So when we're not in an emergency situation, you definitely want a quorum physically present in case for some reason the Zoom stops working or someone's phone cuts out. I know people out in the country, sometimes the internet is not the best and so your phone connection might cut out. That's why you want definitely have a quorum in the room. The other rule is that when you as a single member are attending meetings virtually, you are only allowed to attend 2 in a row virtually and then you must attend one in person. You cannot just skip a meeting and then attend the next one virtually. So if you are not in an emergency and Tyson attended this meeting tonight virtually, he could attend obviously (?) virtually but then that first meeting in September, he needs to show back up in person. If he can't, unless one of the exceptions that I listed up there

applied, he can't show up again until he shows up in person. And then finally if any of these items are on the agenda, if they're on the agenda and the body doesn't actually take action on them, then someone can appear virtually but if any action is taken on any of these items, then no one is allowed to be virtual. So you need to have a quorum in the room and if anyone wants to appear virtually you cannot do any of these things. You cannot adopt a budget. You cannot make a reduction in personnel. You cannot initiate a referendum, establish or increase a fee, use eminent domain authority or establish raise or renew a tax. I know some of you are probably sitting out there going we don't do those. Yes, you do. Park board, you passed a park impact fee. Plan Commission, you also approved the park impact fee which is a tax. Obviously City Council, you adopt the budget. You do CCD(?). Building Commission possibly doesn't do one of these things but.....

DeBaun: They actually set forth the fee schedule for permits and....

Meltzer: Yeah the Building Commission sets forth the fees for permits so it's highly likely that one of these might end up on your agenda. If it does and you're not sure, reach out to me. I'm happy to take a look at it. And as I said, anyone's virtual, you have to do a roll call and you have to put it in the minutes. Here is a template of what the Clerk-Treasurer and myself, Adam, Karin, what you're going to need to come up with to keep track of who attended virtual, when to make sure that you are not doing three meetings in a row, that someone hasn't already met their 50% and then to also show that you had 50% in the room. It doesn't have to look like this. This is just a template. So your policy, which are the ones that I circulated, they meet all of these requirements. They limit the number of members who can participate and I kept it at the 50% that's in the statute. They limit the total number of meetings of the governing body may conduct in a calendar year by (?) communication. That one I did not limit. If your board wants to limit that, you can. Requiring a member except in the case of a meeting called to deal with an emergency to notify the presiding officer and that I did. That is section 7 in your resolutions. This is not an exhaustive list which you saw in section 7. I also put into all of your resolutions requirements for a member of the public that wants to be able to participate virtually. I highly recommending adopting some form of requirements for a member of the public that wants to participate electronically. Mainly because without notice or a requirement for notice, you could have someone calling you two minutes before your meeting starts going hey, I have something for Board of Works and I wanna appear in two minutes virtually, can you do that? And then you have Adam, myself or Suzan trying to run around getting the actual participation link to that person when the meeting is starting in two minutes. So I highly recommend you give your staff person at least 24 hours notice so that they have time to get the member of the public the proper link. Make sure that link is working and that way they can participate electronically. You can also simply state that any member of the public that wants to participate has to show up in person. That is allowed. And then the same kind of thought process in discussion points as I had for the emergency thing, keeping in mind what final action you're not allowed to take and then your public hearings on the public does need to participate. Think about how you wanna handle that. If you wanna have at least one person of that, like if the actual petitioner wants to meet and want the actual petitioner to show up in person or how you wanna handle letting the public participate virtually if at all. So that is pretty much sums it up. These are the questions

you kinda need to think over. Do you wanna allow participation by members of your board or commission by electronic means? You don't have to. And then if so, are there any additional restrictions you want placed on their participation? The only additional restriction I put on it was notice to your respective person if that's what you want to do so that they can get you the link. I think I threw 72 hours into your resolutions. That was simply just a number. You can do 5 hours if you want to keeping in mind if you meet at 8:00 in the morning, 5 hours is like 3:00 a.m. so think through that. And then like I said, public participation, what you wanna do. So I'm gonna start with Common Council 'cause you guys are all at the mikes and other than Joanne, this also allows all of you to go home, so.....

Skip to Plan Commission

Meltzer: Adam,.....(inaudible)....

Rude: 2, 2021-2.

Bowen:(inaudible)....we have a pretty good turnout.

(?): Yeah.

Bowen: Oh and Perry Richards.

(?): Inaudible comment.

Bowen: How are you? Did you like your cup?

Meltzer:(inaudible)....Resolution 2021-2.

Evans: Okay, remind you we are already called to order so we now move to open discussion on Resolution 2021-02 which is our Plan Commission's guide for virtual meetings (?) forward. So take open comments. We've already had some discussion.

Nolley: Recommend the 24 hour for both public and (?).

Doug Cassidy: Yeah if we're gonna trying to keep everything....(inaudible)...

Nolley: Yeah elec.....Yeah.

Lux: I had a question. I think it would be important that some of the things that we've dealt with that the planning office could restrict or limit electronic participation. So in the evidence of like the POET that we had. We had 400 people sign up for electronic that they could say well we can limit it to X number of people.

Evans: Well....

Nolley: I don't know if....

Evans:but they would follow the way I set the meeting for the in person public comment or question portion. So if we set a time limit on the amount of time they have for their individual public comment. Virtual would follow the same as in person.

Lux: That would be one way but that wouldn't limit the

Nolley: I don't think you could limit the number of people.

Lux: You could, what I was thinking is that they could opt to limit the number of electronic participants and then they can limit it at their discretion. You see my point? We could have 400 people sign up to participate electronically from their family room and say hey....

Rude: I don't, yeah it's probably a

Lux:if any department says in this because of public interest, I wanna limit it to 210 and then everybody else, you gotta come. You gotta be present. Does that make sense? You see what I'm talking about?

Evans: I understand why you're requesting that, but I think that could be managed at the meeting the same way we manage in person public comment. Because we would set a time limit. On some things we do set a maximum time for public comment, a maximum time.

Lux:(inaudible)...total time?

Evans: Yes.

Lux: Okay.

Evans: A maximum total time but we do that on the ahead of time before the petition.

Meltzer: Your admin sitting in this chair is going to have to unmute each person and then just they can just re-mute them. So if you set it to 90 seconds, when that 90 seconds runs, they just get muted and the next person's up.

Lux: You might be misunderstanding. I'm just talking about, I'm saying.....

Nolley: He's talking about.....

Lux:(inaudible)....amount of time for each person.

Meltzer: Oh like the total?

Lux: I'm saying when people are getting more comfortable with electronic participation in government meetings, we could have something where you know he gets a request and there are 400 people that have decided that they wanted to electronically participate.....

Nolley: 400 minutes.

Lux:400 90 seconds, what if. But I'm saying that given the situation, they should be able to say we're gonna limit electronic participation to X and anybody else, you need to come in, be there in person.

Nolley: But you're saying you could cover all that by just saying the overall public comment is one (?)?

Evans: Yes, if you recall there was one meeting at the high school that the person exceeded their amount of time for public comment. They had already stated their opinion on the petition at hand and I asked for that microphone to be turned off.

Nolley: But that was one person.

Evans: That was one person but we can guide that at the meeting. I don't know that we will necessarily have, I mean there's worst case scenario but I don't want it to be to where it looks like this board is disallowing public comment virtually.

Rude: And I think, if I may, if there's a particular petition that we know is coming next month or a few months out, I would imagine, I'm gonna put Jenny on the spot here. I would imagine the board can alter those rules for that one hearing if we provide that in the notice that goes out. So if we know something's going to be controversial, we're gonna relocate to the high school. There's gonna be hundreds of people. We want all the participation in person. I would imagine knowing that a few months out that the Plan Commission can take action.

Evans: And I've asked for can you change just to make it more accommodating because of what I anticipated would be the public hearing portion.

Nolley: Inaudible comment.

Rude: 500. I just pulled up.

Nolley: Participants?

Rude: Yes.

Meltzer: I can add a subsection under where it says that under subsection B about the members of the public. I can add a number 4 that simply states participation by the public will

be at the sole discretion of the planning department director. That way, if it's getting out of control, Adam can just email all of you guys and say, look we're up to 20 participants.

Evans: Yep.

Meltzer: I'm now saying that we've reached our max or whatever's.....I mean Zoom can only handle so many people (?).

John Kuntz: That's true.

Evans: For participation, not for

Meltzer: Correct.

Nolley: Not for attendance.

Evans: Yeah not for attendance.

Meltzer: No, yeah attendance is also on Facebook so Facebook can handle however many people wanna log on there and watch it. And the Zoom link can handle a lot of people just logging on or watching it through that link which means they have two options for attending and observing. But to actually participate in your public hearing, I don't know what the number, I don't know what the number of participation options we signed up for 'cause it's a different program and I don't remember which one we've got but I doubt it's more than 50 people probably that are actually actively or a hundred people actually actively participating.

Kuntz: 50 people who can talk to us.

Meltzer: Yes, participate and talk.

Kuntz: I don't....(inaudible)...

Lux: I think you're getting there. You're getting to what.....as long as there is an avenue to be able to not limit public participation but limit.....(inaudible)...

Nolley: Inaudible interruption.

Rude: And quite frankly from my, from the staff's standpoint, if I see if I know something like that's coming up, I'm gonna make you all aware so that we aren't trying to juggle 50 people signing up to speak, trying to get feedback from you, figuring out the logistics and relocating a meeting. That sounds like a nightmare and I don't wanna do that. So I'd reach out early enough to....

Cassidy: We'd know plenty advance 'cause they have to let you know 24 hours before our meeting so we would know plenty advance how many in.....

Nolley: And I think most people, unless they were trying to hijack something, wanting to hear it and they might. Now you can say it's 10 virtual. Otherwise you gotta show up in person or submit a written letter.

Lux: And obviously you guys have done a great job of adjusting the schedule, adjusting the location on demand. I just don't want you to get.....I don't want this board to have to be forced into a situation that is out of control because of the rules we set up.

Rude: Uh huh.

Lux: That was(inaudible).... That's it for me.

Evans: One other question; Adam, because you've seen the revision, do we still have the petitioner has to be in person but support can be virtual?

Rude: Yes. Jenny, I don't have that pulled up.

Meltzer: Under number one about notifying, you've got your A-F. F, if the member of the public is also the petitioner in front of the Plan Commission, identify one person who will appear in person. So in their notice they should be telling you who's gonna be in person. And then I added paragraph 3 which says petitioner shall have one member of their team appear in person at the meeting. All others may request to appear virtually under subsection 7B. And paragraph 4 now says the Planning department director may refuse electronic participation due to chronological limitations or former abuse of electronic participation to any member of the public in their sole discretion.

Evans: Okay.

Meltzer: You've got someone who just starts showing up to every single one of your meetings to spout off about something that happened 6 months ago, we can tell them no. Like that item's not on the agenda. You're we're not giving you the participation link.

Evans: Every Knauf petition.

Laughter.

Evans: Okay so any questions from this end? You guys still with us? I know you've already done this, Joanne, but alright so I'll entertain a motion to adopt with revisions.

Nolley: Motion to adopt Resolution what it 21-2, with revisions.

Cassidy: Second.

Evans: Okay I have a motion and a second. Adam, will you please call the voice votes?

Rude: Ms. Bowen - aye, Mr. Martin - aye, Mr. Cassidy - yep, Mr. Evans - yes, Mr. Nolley - aye, Mr. Lux - aye, Mr. Kuntz - aye.

Evans: I'm waiting on the attorney to tell us that we are free to go back to the little room and sign.

Meltzer: Yeah you're free to sign. You're free to use my conference table if you want to. It is (inaudible)....

Evans: Alright, thank you. Adjourned. Thank you for coming out on this beautiful afternoon.

The Board of Zoning Appeals was called to order.

Meltzer: Alright, BZA.

(?): Say copy/paste.

Cassidy: Jenny, did you hear that?

Meltzer: Huh?

Cassidy: Copy and paste what just went on.....(inaudible)....

Meltzer: Yeah.

Cassidy: Inaudible comment.

Clark: Everything I would (?).

(?): Everything.

(?): Inaudible comment.

Meltzer: Let me get to yours. Okay so I had a request to amend BZA's resolution to match Plan Commission's so the amendments are that a member needs to give the (?) commission director 24 hours notice. The public, is that 24 hours notice. You still have subsection F that says the petitioner in front of the BZA, they need to identify one person who will appear in person. And then I've added paragraph 3 which also clarifies that to say a petitioner shall have one member

of their team appear in person. All other members may request to appear virtually pursuant to section 7B. And then paragraph 4, the Building Commission director, Building Commission director may refuse electronic participation due to technologic limitations or former abuse of electronic participation to any member of the public in their sole discretion. Otherwise it is the same resolution that was emailed to you unless it had a typo in it such as council instead of BZA. I didn't go back through and double checked all those.

Clark: The meeting was called to order. We've discussed.

Clark: Have any questions?

James Lisher: Oh what? We've started the meeting now?

Clark: Yes.

Lisher: I was advised has section 7 been modified to show that on number 1 notify plan director rather than the Clerk-Treasurer?

Meltzer: Yes it states Building Commission director now.

Lisher: My other question was under section 7 (?) F. I don't quite understand it. The petitioner ...(inaudible)...BZA identify one person who will appear in person. I don't quite understand that.

Meltzer: So it's simply stating that if you're the petitioner in front of the BZA that you need to tell the Building Commission director who's going to be in front of you, a person and I added paragraph 3 to hopefully help with that that says a petitioner shall have one member of their team appear in person. All the members may request to appear virtually pursuant to section 7B.

Lisher: My copy.....

Meltzer: I tweaked that language multiple times, Jim and I'm not quite sure the best way to write it.

Lisher: Okay but that's all I have.

(?): So just one person needs to be here and they need to let us know (?) we're headed. Yes, I agree.

Clark: And so a motion to

Cassidy: I'd like to make a motion to approve 2021.....

Lisher: dash 1, isn't it?

Cassidy: 2021-2, isn't it?

Lisher: No, dash 1.

(?): Dash 1.

Cassidy: 21-1 with the amendments that we made.

(?): Second.

Clark: Will you take a

Rude: Mr. Bradburn - aye, Mr. Cassidy - aye, Clark - aye, Mr. Lisher - aye.

Meltzer: You can adjourn and I get (?) so people can use my conference table to sign.

Clark: Motion to adjourn?

Cassidy: Second.

Meeting adjourned as pertains to BZA and Plan Commission.