

BOARD OF COMMISSIONERS OF MORGAN COUNTY, ILLINOIS
ORDINANCE NO. 2019 - _____

**AN ORDINANCE APPROVING AND ADOPTING RULES AND PROCEDURES FOR
LAND USE PUBLIC HEARINGS**

WHEREAS, in the case of Klaeren v. Village of Lisle, 202 Ill.2d 164 (2002), the Illinois Supreme Court determined that land use public hearings held by governmental bodies must be conducted in a manner that meets the minimum substantive and procedural due process rights of the applicant and other interested parties, and that such due process rights include the right of notice of the public hearing, the opportunity to present witnesses and other evidence (through oral or written testimony and submittal of documents), and to question adverse parties and witnesses about their testimony and evidence; and

WHEREAS, the Morgan County Board of Commissioners desire to adopt a set of general rules and procedures to guide the County Board of Commissioners and any other County boards, committees and commissions in the conduct of public hearings related to any land use approvals of any kind conducted under applicable State laws (i.e., the Illinois Counties Code, 55 ILCS 5/), including but not limited to subdivisions, special uses, variations, rezoning and planned unit developments, in light of the Illinois Supreme Court decision issued in the case of Klaeren v. Village of Lisle, 202 Ill.2d 164 (2002) (reversed in part by Public Act 94-1027 dated July 14, 2016, effective immediately, which provided zoning decisions are legislative acts not “quasi-judicial” ones, enacted a ninety (90) calendar day judicial review filing deadline and ruled that substantive and procedural due process apply at all stages of decision making and review of all zoning decisions) and Section 5-12012.1 of the Illinois County Code (55 ILCS 5/5-12012.1); and

WHEREAS, at an open public meeting conducted on _____, 2019, the Morgan County Board of Commissioners considered the rules and procedures set forth below in Section 2 of this Ordinance, which are entitled “RULES AND PROCEDURES FOR LAND USE PUBLIC HEARINGS” (the “Morgan County Rules And Procedures For Land Use Public Hearings”) and the Morgan County Board of Commissioners provided the public with opportunities to review and provide comments on the Morgan County Rules And Procedures For Land Use Public Hearings; and

WHEREAS, at the _____, 2019 meeting, after discussion and consideration of the Morgan County Rules And Procedures For Land Use Public Hearings and further consideration of the comments provided by the public, the Morgan County Board of Commissioners voted to approve and adopt Morgan County Rules And Procedures For Land Use Public Hearings as set forth below in Section 2 in order to enact, implement and use the Morgan County Rules And Procedures For Land Use Public Hearings; and

WHEREAS, pursuant to the applicable provisions of the Illinois Counties Code (55 ILCS 5/), as amended, the Morgan County Board of Commissioners have the authority to enact this Ordinance and determine and find that it is in the best interests of Morgan County, its residents, businesses, property owners and the public to enact this Ordinance to enact a set of rules and regulations to guide all Morgan County boards, commissions and committees that conduct public hearings relative to land use approvals.

BE IT ORDAINED BY THE CHAIRMAN AND BOARD OF COUNTY COMMISSIONERS OF MORGAN COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: The above recitals are incorporated by reference into Section 1 of this Ordinance as material terms and provisions.

SECTION 2: The Board of County Commissioners of Morgan County, Illinois approve and adopt the following regulations:

- Chapter 2: Rules and Procedures for Land Use Public Hearings**
- Section 2.1: Purpose and Findings**
- Section 2.2: Definitions**
- Section 2.3: Rules and Procedures**

Chapter 2: RULES AND PROCEDURES FOR LAND USE PUBLIC HEARINGS

Section 2.1: PURPOSE AND FINDINGS

The purpose of the following Rules and Procedures is to guide the County Board of Commissioners and any other County boards, committees and commissions in the conduct of public hearings related to any land use approvals of any kind conducted under applicable State laws (i.e., the Illinois Counties Code, 55 ILCS 5/), including but not limited to subdivisions, special uses, variations, rezoning and planned unit developments, in light of the Illinois Supreme Court decision issued in the case of Klaeren v. Village of Lisle, 202 Ill.2d 164 (2002) (reversed in part by Public Act 94-1027 dated July 14, 2016, effective immediately, which provided zoning decisions are legislative acts not “quasi-judicial” ones, enacted a ninety (90) calendar day judicial review filing deadline and ruled that substantive and procedural due process apply at all stages of decision making and review of all zoning decisions) and Section 5-12012.1 of the Illinois County Code (55 ILCS 5/5-12012.1). In Klaeren, the Illinois Supreme Court determined that land use public hearings must be conducted in a manner that meets the minimum substantive and procedural due process rights of the petitioner and other interested parties. The public hearing must therefore include the right of notice of the public hearing, the opportunity to present witnesses and other evidence (through oral or written testimony and submittal of documents) and to question adverse parties and witnesses about their testimony and evidence. Pursuant to the applicable provisions of the Illinois Counties Code (55 ILCS 5/), as amended, the Morgan County Board of Commissioners approved and adopted by ordinance these Rules and Regulations after determining and finding that it is in the best interests of Morgan County, its residents, businesses, property owners and the public to enact and provide a set of rules and regulations to guide all Morgan County boards, commissions and committees that conduct public hearings relative to land use approvals.

Section 2.2: DEFINITIONS

For purposes of interpreting these Rules and Procedures, the following definitions apply:

- “Public Body” means the Morgan County Board of Commissioners, any Zoning Commission, Board of Appeals and any other County board, committee and commission.

- “Petitioner” means any person who has filed a petition or application for land use approval or relief and his or her attorney or consultant.
- “Objector” means any person who desires to object to a filed petition for land use relief and his or her attorney or consultant.
- “Interested Person” includes but is not limited to: County residents, County property owners, County business owners, County staff, members of the public and any attorney or consultant appearing on behalf of the County, County residents or members of the public.

Section 2.3: RULES AND PROCEDURES

The following Rules and Procedures shall apply to all public hearing proceedings, unless modified by the parties:

1. Notice requirements for any public hearing shall conform to applicable State laws, such as the Illinois Counties Code (55 ILCS 5/) and all Morgan County local ordinances, including its Subdivision Regulations Ordinance (adopted March 29, 1999) and any zoning regulations if adopted by the County Board. It is the responsibility of the Petitioner, at its cost, to ensure that any required notice is given in a timely manner, consistent with statutory and ordinance requirements. The statutory and ordinance notice requirements cannot be modified.

2. All public hearings of a Public Body are meetings as defined by the Illinois Open Meetings Act (5 ILCS 120/1 *et seq.*). The Illinois Open Meetings Act must be adhered to in all instances. Beginning January 1, 2004, the Open Meetings Act requires that a verbatim record of all closed meetings of Public Bodies be kept in the form of an audio or video recording. Under these Rules and Procedures, the Public Body shall make verbatim audiotape recordings of its closed session meetings. No final action (or final vote) may be taken on any matter in a closed session (5 ILCS 120/2 (e)).

3. All individuals desiring to participate in the public hearing process may register at the County Clerk’s Office during normal business hours or immediately prior to the commencement of the public hearing with the County’s staff liaison, or his/her designee, or during the public hearing, provided that they do not disturb the proceedings. The Public Hearing Registration Form will be made available at the public hearing and copies are available at the County Clerk’s Office. This form can be used for a specific public hearing or for multiple public hearings to be heard at one meeting of the Public Body.

4. At a public hearing, a Petitioner, Objector or other Interested Persons may appear on his or her own behalf or may be represented by an attorney or a consultant.

5. Prior to the commencement of the public hearing, the Chair (i.e., the appointed or elected presiding officer) of the Public Body will determine whether there are any Objectors or other Interested Persons and if an attorney represents any Objector, group of Objectors or Interested Persons. The Chair will also determine whether any parties have evidence or testimony to be admitted. The Chair may make prefatory comments indicating the order of presentation, and the ability to ask questions and to present testimony. The Chair will also explain that, during the time for questioning witnesses, testimony should not be given by the person asking questions.

6. Unless the Chair decides to alter the order of presentation, the general order of presentation will be as follows:

- A. Opening of public hearing
- B. Swearing in Petitioner, Objectors and Interested Persons
- C. Confirmation of notices published and mailed in accordance with applicable State law(s) and County requirements
- D. Petitioner presentation (brief review of petition, identification of submitted documents, testimony of witness(es) and submittal of new documents, etc.)
 - Questions by Public Body
 - Questions by Objectors and Interested Persons
 - Rebuttal
- E. County staff and consultant(s) presentation (summary of staff plan review and recommendation, identification of submitted documents, testimony of witness(es) and submittal of new documents, etc.)
 - Questions by Public Body
 - Questions by Objectors and Interested Persons
 - Rebuttal
- F. Objectors presentation(s) (statement of objections, identification of submitted documents, testimony of witness(es) and submittal of new documents, etc.)
 - Questions by Public Body
 - Questions by Petitioner and Interested Persons
 - Rebuttal
- G. Interested Persons presentation(s) (statements, identification of submitted documents, testimony of witness(es) and submittal of new documents, etc.)
 - Questions by Public Body
 - Questions by Petitioner and Objectors
 - Rebuttal
- H. Final questions by Public Body
- I. Closing remarks by Petitioner, Objectors, Interested Persons and County staff
- J. Action by the Public Body (e.g., a motion to approve or deny the petition, or a motion to recommend approval or denial of the petition, or a motion to continue the public hearing to a specific future date and time for further proceedings, etc.)
- K. Close or continuation of public hearing

7. The Chair may impose reasonable limitations on evidence or testimony presented by persons and parties, such as barring repetitious, irrelevant or immaterial testimony. The Public Body shall not be bound by strict rules of evidence; however, irrelevant, immaterial or unduly repetitious evidence shall not be admissible. The Chair shall rule on all questions related to the admissibility of evidence, which ruling may be overruled by a majority of a quorum of the Public Body.

8. The Chair may take such actions as are required to maintain an orderly and civil hearing.

9. All public hearings must have a record of proceedings. For major presentations, the public hearing will be transcribed by a certified court reporter at the cost of the Petitioner. Other public hearings may be recorded by use of a tape recorder. Care should be made to ensure the tape recorder is functioning and will be audible to a person seeking to understand the proceedings.

10. Since the Petitioner has the burden of proof, the Petitioner should present his or her evidence and witnesses first. All persons offering testimony at a hearing shall testify under oath. An attorney shall be sworn if he or she offers testimony but not if he or she is questioning witnesses, summarizing testimony of witnesses, or addressing the Public Body.

11. All exhibits shall be clearly and distinctly marked by the person offering the exhibit into the record and the exhibit number or letter shall be identified when the exhibit is used at or referred to during the public hearing.

12. After each witness has testified, the Petitioner, County staff and consultants, Objectors and Interested Persons will have the right to ask questions of the witness. While there is no time limit placed upon the opportunity to ask questions of the witness, if a question has already been asked by some person, the Chair may refuse to allow a second person to ask the same question. Questions must be relevant and material to the public hearing proceeding. The opportunity to question a witness shall not be used by the questioner to offer testimony or evidence of the questioner.

13. All individuals testifying or participating shall identify themselves for the record, either orally or in writing, and indicate if an attorney represents them.

14. If a hearing needs to be continued to another date in order for a full presentation by all parties, then it may be continued to a date and time selected by the Public Body and approved by a motion of the Public Body.

15. A written decision shall be prepared which shall include findings of fact and the Public Body's recommendation or decision based upon the record. An ordinance approving or denying the petition may be a sufficient written decision if it contains appropriate findings of fact concerning the relevant standards to be applied by the Public Body.

This Policy is designed to provide a generally applicable framework for public hearings so that full and fair hearings are conducted by the Public Body. The Public Body should know all of the facts concerning a proposed land use, and a thorough and complete hearing process is the best way to learn about the facts and the issues concerned.

Section 3: Severability. If any section, paragraph, clause, phrase or part of this Ordinance is for any reason held invalid by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of these regulations, and the application of those provisions to any persons or circumstances shall not be affected thereby.

Section 4: Repeal. All ordinances and regulations and amendments thereto enacted and/or adopted by the County Board that conflict or are inconsistent with the provisions of this Ordinance are repealed to the extent of such conflict or inconsistency, as of the effective date of this Ordinance. The repeal of any prior ordinance, regulation or amendments thereto does not affect or impair any prior relief or approvals granted under the prior version(s) of such ordinances, regulations or amendments thereto.

Section 5: Effective Date. This Ordinance is an ordinance necessary for the health and safety of the people of Morgan County, Illinois, and shall be in full force and effect from and after its passage, approval and publication as provided by State law.

Passed this __ day of _____, 2019.

____ Aye / Nay ____

Bradley A. Zeller, Chairman/Commissioner

____ Aye / Nay ____

Bill Meier, Commissioner

____ Aye / Nay ____

Ginny Fanning, Commissioner

Certification: _____
Jill S. Waggener, County Clerk

Date: _____, 2019.