



Communities on Course

Land Use

Plan Commission Public Hearings: A Plan Commissioner's Guide

Gregory Dale, Principal,
McBride, Dale, & Clarion,
Cincinnati, Ohio

Scott Hutcheson,
Leadership & Community
Development Specialist,
Purdue University

Knowledge to Go
Purdue Extension
1-888-EXT-INFO



Introduction

Ask members of local plan commissions which part of their job presents the greatest challenges, and you will likely find *public hearings* near the top of the list. Plan commission public hearings are sometimes the perfect settings for confrontation and conflict, but they don't have to be.

It is important for plan commission members to understand that public hearings should only be one part of an overall commitment to public participation. When the plan commission and general public interact throughout the planning process, public hearings can be a more productive use of everyone's time and energy.

This publication assists plan commission members and others involved in the planning process to better understand the role of public hearings and how they can be conducted effectively. It is a companion piece to *Plan Commission Public Hearings: A Citizen's Guide*, also available from Purdue Extension. (See "References & Additional Resources.")

Serious Business

Public hearings are serious business. Members of planning and zoning boards are part of a formal, legally established system of planning and land use regulations. It is a system that influences the way in which people use their own private property. The law in this country

is clear that governments do, in fact, have this power to regulate private property. Therefore, it is essential that plan commission members take this responsibility seriously.

The law is also clear, however, that when exercising the authority of the plan commission, members operate within carefully established legal limits. In addition to specific laws set forth in the community's zoning and subdivision regulations, and laws set forth in the Indiana Code, there is an additional principle of which plan commission members should be aware. *When regulating private property, the plan commission must do so for a legitimate public purpose, allowing a reasonable use of the property, and making decisions in a fair and open manner.*

Decisions regarding individual property rights and public property needs are among the most challenging responsibilities that are held by public officials. For a more thorough discussion of property rights, consult the Purdue Extension publication, *Private Property: Rights, Responsibilities, & Limitations*. (See "References & Additional Resources.")

Connecting People with Government

Adding an even greater challenge to the already difficult decisions that plan commissions make is the fact that these decisions are made in public view at the public meetings and hearings that the

plan commission conducts. So members should remember that these opportunities for interaction between government and the people are just as important as the legal framework within which the plan commission operates. Plan commission members should be mindful of the impression that the plan commission creates and the general public's perception of the commission through these public meetings and hearings.

In today's political environment, many citizens have a high level of skepticism toward "government." What many commissions lose sight of is that in the eyes of the average citizen, the plan commission is in fact "the government." In some cases, interaction with a local plan commission is the most direct and intense contact people have with government. As a "government official," a plan commission member already faces a difficult challenge; one misstep in terms of how a public meeting is run can result in a loss of credibility. Once that credibility is lost, it is very hard to recover.

How, then, does a plan commission run efficient, defensible, and "user friendly" public hearings? The answer lies in understanding both the legal underpinnings of fair decision making and some nuts-and-bolts tips to running public hearings.

Legal Issues

First, all plan commission meetings—not just plan commission public hearings—are open to the public, as are the meetings of most public agencies, although this has not always been the case. While some communities have a long legacy of public accessibility and citizen involvement, there are other communities with a history of closed-door decision-making. In 1977, when Indiana's Open Door Law was passed, all public agency meetings at which "official actions" were taken became legally open to the public.

According to the Open Door Law, a "meeting" is a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon business (IC 5-14-1.5.1). "Official action," according to the Open Door Law, means to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action. The Open Door Law lists four types of gatherings that are not considered "meetings." These gatherings include (1) any social or chance gathering not intended to avoid the requirements of the Open Door Law; (2) any on-site inspection of a project or program; (3) traveling to and attending meetings of organizations devoted to the

Table 1. Official Actions of the Plan Commission for Which Public Hearings Are Required in Indiana

Section	Official Action
IC 36-7-4-205, 507, 508	Comprehensive plan
IC 36-7-4-602	Adoption of initial zoning ordinances or replacement zoning ordinances
IC 36-7-4-604	Certifying proposals to the legislative body
IC 36-7-4-607, 608	Zoning ordinances
IC 36-7-4-613, 614	Modification to or termination of development plan commitments
IC 36-7-4-1311, 1326	Impact fees
IC 36-7-4-1404	Development plans for zoning districts
IC 36-7-4-1511	Modifications to Planned Unit Development (PUD) district ordinances.

betterment of government; or (4) a caucus (Indiana Attorney General Modisett, 1997).

In a public meeting of the plan commission, the public may attend and observe, but not necessarily participate. The public hearing, on the other hand, is the mechanism for the public to provide comment. The express purpose of a plan commission public hearing is to receive written and oral testimony on specific matters (Allor, 1984). Some plan commissions allow the public to comment on any agenda item at any time during a meeting; others allow comment only during formal public hearings (Bergman, 1998).

The Open Door Law uses the term “official actions” to describe the decisions for which a public hearing is required. Table 1 lists the specific official actions, as outlined in the Indiana Code, for which plan commission public hearings are required.

One of the overriding legal concepts that applies to public hearings is the concept of “due process.” This is a legal term that should be taken very literally: whenever considering action that may affect the rights of an individual, that individual is “due” a certain “process.” Due process can be divided into two sets of issues: those that deal with how plan commission members make decisions and those that deal with the subject matter, or substance, of decisions. Elements of due process regarding decision-making procedures include the following.

Notice

One of the most basic elements of due process is notice. Notice should be adequate and timely. It should be reasonably calculated to let interested parties know about a proposed action and give them an opportunity to present their support or objections. The average person must be able to understand the notice. It must allow sufficient time for

interested parties to prepare. Remember also that legal requirements for notice are the minimum standard that must be met. Some plan commissions choose to exceed the minimum standards and go the “extra mile” to make sure interested parties are notified.

Clear Rules

Rules for the proceedings should be set out clearly in advance and followed.

Opportunity to Be Heard

All parties interested in a proposed action must have the opportunity to be heard and to present evidence to support their position. Hearings must be open to the public. This does not imply endless or late-night, meetings. In fact, an argument can be made that persons who are not able to testify until very late at night, when the commission members can no longer concentrate, are not being provided with a reasonable opportunity to be heard.

Full Disclosure

All parties must have full access to information, statements, and evidence relied upon by decision-makers to make their decision. “Ex parte” communication should be avoided. Ex parte communication involves contact that occurs outside of the meeting process between interested parties—either applicants or opponents—and members of the commission. Also, plan commissions should avoid acting on information received at the last minute.

Findings & Complete Records

Findings are the legal “footprints” that are left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. Written documentation should reflect:

- All facts (documents, exhibits, testimony, etc.);
- Standards;
- Weighing of evidence;

- Determination of compliance; and
- The decision with any conditions or reflections.

A full and clear record must be kept of the proceedings, including not just the deliberation of the commission, but also all evidence that is offered and relied upon by the plan commission.

Unbiased Decisions

Decision-makers should be free of bias or prejudice. Members must disclose conflicts of interest or apparent conflicts of interest. In the event that a conflict, or potential conflict, is raised in the mind of a plan commission member, he or she should disclose it.

One way to handle this is for the individual commissioner to indicate whether he or she believes a conflict exists, or whether there would be the appearance of a bias, and then have the commission make a determination as to whether that individual should be excused from voting. If the individual is excused from voting, he or she should not participate in the discussion. The “cleanest” way to proceed is for the commission member to leave the room during that agenda item.

Timely Decisions

Decisions should be made within a reasonable period of time. The plan commission should avoid having the process used as a delaying tactic.

Due Process

The preceding discussion of some of the legal issues associated with public hearings outlines the procedural elements of decision making. There are also what lawyers often refer to as “substantive” elements of due process. Procedures deal with how decisions are made. Substantive due process deals with the subject matter, or content, of the decisions. The plan commission is charged

with making decisions that are in the public’s interest. The following is a summary of the elements of substantive due process and public interest.

Legitimate Public Interest

The regulation should advance a legitimate public interest. Many zoning regulations have the intent and effect of accomplishing results that are not legitimate public policy objectives. For instance, a zoning regulation that excludes people based on race or socioeconomics would not be in the public interest.

A Reasonable Way to Accomplish Public Interest

There may be many ways to accomplish a certain objective, but plan commission members must balance public interest and private interest. The particular regulatory approach should be reasonable and reflect this balance.

Documented Relationship Between the Regulation & Public Interest

A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. (See “Findings & Complete Records.”)

Reasonable Economic Use of Property

Again, the public interest being served by the regulation must be balanced with the private interests so that there is some reasonable use of the property possible under the zoning regulation.

Fair Application

Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

It is virtually inevitable that some plan commission decisions will be disputed. If a dispute goes as far as the court system, the bottom line is that a court will be reluctant to overturn a decision that is well reasoned, supported by valid planning analysis, allows some reasonable use of the property, and was fairly made.

The Nuts & Bolts of Public Hearings

Plan commission members who understand the concepts of due process and public interest will have a theory base that can help them conduct effective public hearings. There are also some nuts-and-bolts-type guidelines that, if followed, can help make public hearings more productive.

To effectively conduct public hearings the plan commission must first know what they are looking for in the process. The job of plan commission members is not to determine whether or not they “like” what is being proposed. Their job, rather, is to hear factual evidence for the purpose of determining whether or not standards set out in the community’s codes, ordinances, and/or plans are met. While it is important to project a caring and interested attitude, the plan commission ultimately is not a committee of compassion. With that in mind, the following are some tips for running hearings.

Rules of Procedure

The plan commission must have good rules of procedure or by-laws. A plan commission should be careful about simply incorporating “Roberts Rules of Order.” “Roberts” was written for partisan parliamentary bodies and does not work perfectly in plan commission meetings. Certain basics of motions, seconds, tabling, etc. can be pulled from “Roberts Rules of Order” selectively, but it is best if the plan commission has its own set of procedural rules or bylaws.

Sign-in Sheet

A sign-in sheet that requests name and address for people who attend the hearing is an idea worth consideration. All persons signing in should indicate on the sign-in sheet whether or not they intend to speak. Once the meeting starts, the sign-in sheet can go to the chairperson as a guide to speakers. The plan commission can also indicate that anyone who includes his or her address on the sign-in sheet will be given a postcard notice of the next meeting. This is another way to improve public notice.

Microphone and/or Podium

Whenever possible, a microphone or podium should be available. After being recognized by the chairperson, individuals wishing to speak should be asked to come to the microphone or podium to provide their comments.

Statement of Meeting Procedures

The chairperson should read a statement about how the meeting will be run. This statement should emphasize the importance of providing an opportunity for all people to have a reasonable chance to be heard.

Staff Summaries

If the plan commission has a professional planning staff, a staff member should present a summary of the application first. This can avoid unnecessary duplication of presentations.

Swearing-in of Witnesses

Swearing-in witnesses may not be well accepted in all communities, but administering an oath to all people who intend to testify is a strong signal that public hearings are serious business and should not be taken lightly.

Spokespersons

If groups of individuals (neighborhood associations, etc.) attend the hearings, the

groups should be encouraged to appoint a spokesperson to present the group's comments.

Time Limits

Reasonable time limits for speakers should be set. There is no magic number for time limits; the time limit can be based upon the number of people that wish to speak. Groups using spokespersons can be "rewarded" with more time than an individual who is not part of the group, but ultimately all individuals must have a chance to speak. A typical range of time limits is somewhere between five and 10 minutes, depending upon the number of people who wish to speak.

Factual Testimony

While the plan commission is hearing testimony, members should not express opinions or positions. Individual members, after being recognized by the chairperson, should ask questions to clarify testimony, but consider it a fact-finding period. When speakers give only opinions or information that is not relevant, they should be encouraged in a friendly way to address the standards with factual testimony.

Deliberation

Once finished with the testimony phase, the plan commission moves into a deliberative phase. At this point the members of the audience become observers rather than participants.

The plan commission members, under the control of the chair, begin to discuss the merits of the testimony. Some commissions ask for an immediate motion for discussion purposes. Another approach is for the commission to deliberate prior to making a motion. In this approach, the commission members share views, discuss what they determine to be credible and relevant testimony, assess compliance with the standards, and try to get to a point where a consensus appears to be emerging.

Only then should an individual member make a motion. That motion should be an effort to reflect the consensus of the commission with regard to action and basis for the decision. A good motion should include the language "because" or "based upon," along with a recitation of the reasons for the action. (See "Factual Testimony.")

Attentiveness

Each plan commission member should project an attitude of attention and interest. Hearings can get long and tedious. But for individuals providing comment, this may be a very important event, and they have a right to expect the plan commission's full attention. Plan commission members should be careful of body language and avoid whispering or speaking inaudibly to fellow commission members. This simply arouses suspicions for the average citizen.

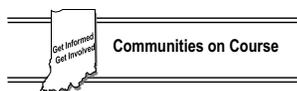
Preparation

Each plan commission member should come to these meetings ready to work. It does a disservice to all involved if the plan commission has not done its homework; this includes review of staff reports or site viewing.

In addition to these guidelines for effectively running public hearings, the plan commission should also make sure the public knows how they can also effectively participate in this process. Some plan commissions are using technology to help educate local citizens about the planning process and how to be involved. Many plan commissions have their own Web page that provides meeting schedules, agendas, and information about how to participate. Another way to help citizens prepare for public hearings is to make available *Plan Commission Public Hearings: A Citizen's Guide*. (See "References & Additional Resources.")

Conclusion

The keys to effectively running public hearings are using common sense and applying notions of fairness. If the plan commission understands the legal framework within which it operates and is sensitive to the fact that the perception of their conduct is critical to credibility, they can apply the principles described here to the unique circumstances of each community. An important objective is to make sure that people leave plan commission hearings thinking that regardless of whether they won or lost, at least they were treated fairly.



Learn more about communities, land use, growth, and how you can be involved from your local office of Purdue Extension.

References & Additional Resources

Books & Articles

Allor, D. 1984. *The Planning Commissioners Guide*. Chicago, IL: American Planning Association Planners Press.

Bergman, T. 1998 *Indiana Citizen Planners Guide Part 1: Plan Commission Basics*. Indiana Planning Association.

Indiana Attorney General Modisett & Hoosier State Press Association. 1997. *The Open Door Law and the Access to Public Records Act*. Indianapolis, IN: The Indiana Attorney General's Freedom of Information Task Force. Also available on the Internet at: <http://www.state.in.us/hoosieradvocate/html/public/open.html>.

Indiana Planning and Zoning Laws Annotated 1995 Edition. Charlottesville, VA: Michie Company. (Published under the auspices of Indiana Continuing Legal

Education Forum, Indiana Bar Association Governmental Practices Section, and Indiana Planning Association, Inc.)

Langton, S. 1978. *Citizen Participation in America*. Lexington, MA: Lexington Books.

Smith, H. 1989. *The Citizen's Guide to Planning*. Chicago, IL: American Planning Association Planners Press.

Solnit, A. 1987. *The Job of the Plan Commissioner*. Chicago, IL: American Planning Association Planners Press.

The Community Planning Handbook. 1993. Indianapolis, Indiana. A joint publication of Indiana Association of Cities and Towns, Association of Indiana Counties, and Indiana Planning Association.

Purdue Extension Publications

Frankenberger, J. 2000. *Land Use & Water Quality*. ID-230.

Harrison, G. A. and J. J. Richardson. 1999. *Private Property: Rights, Responsibilities, & Limitations*. ID-229.

Harrison, G. A. and J. J. Richardson. 2000. *Conservation Easements in Indiana*. ID-231.

Hutcheson, S. 1999. *Plan Commission Public Hearings: A Citizen's Guide*. ID-224. Purdue University Cooperative Extension Service.

You can order Purdue Extension publications through your local county office of Purdue Extension or by calling 1-888-EXT-INFO.

You can find online versions of Purdue Extension publications on land use at <<http://www.agcom.purdue.edu/AgCom/Pubs/agecon.htm#30>>.



Knowledge to Go
Purdue Extension

NEW 2/00

It is the policy of the Purdue University Cooperative Extension Service, David C. Petritz, Director, that all persons shall have equal opportunity and access to its programs and facilities without regard to race, color, sex, religion, national origin, age, or disability.

Purdue University is an Affirmative Action employer.
This material may be available in alternative formats.
<http://www.agcom.purdue.edu/AgCom/Pubs/menu.htm>
1-888-EXT-INFO