

Dealing With Contentious Public Hearings

by Wayne Senville

One of the toughest challenges facing planning commissioners is how to deal with contentious public hearings. Most commissioners, at some point or another, find themselves facing a crowd of angry citizens, and sometimes angry project applicants.

Since public hearings can involve controversial issues, it's not surprising when they become the focal point for strong emotions. When the temperature in the meeting room rises, it can also become more difficult for planning commissioners to consider the testimony and reach well-reasoned decisions. Planning board members may sit there wondering why some of the controversial issues couldn't have been resolved earlier. From my own experience serving on a planning commission, I can attest to the fact that I certainly felt that way on more than one occasion!

Over the past year, I asked a number of planners and planning commissioners what can be done to improve the public hearing process. The results are distilled in a dozen tips, grouped into two categories: Before the Hearing and During



"It was a bear of a meeting."

the Hearing. In some cases there are cautionary notes that go with the tip. But one piece of advice that applies to all of them: be sure to go over any proposed changes in your commission's procedures with your municipal attorney. What may be perfectly acceptable practice in one state or community, may be unlawful in another.

I also want to invite you to continue

the discussion on our PlannersWeb blog. Post your comments on our new Public Hearings Resources Page: www.plannersweb.com/hearings.html. Share what's worked – and what hasn't – in your own community. The aim is for all of us to learn from each other.

BEFORE THE HEARING

1. Consider Conducting Preliminary Project Reviews

One common approach to reducing the likelihood of contentious public hearings is to have preliminary project reviews. The idea is that less formal meetings before the public hearing can hone in on aspects of a project that might be problematic, giving applicants some feedback before they invest substantial time and money in preparing detailed plans and drawings.

A pre-application meeting can be especially helpful when a controversial project is about to enter the pipeline. Staff can identify to the applicant potential trouble spots with what is being proposed. Several planners I spoke with found this a very useful practice, particularly when input from various municipal departments (e.g., public works, engineering, and fire) is coordinated.

Pre-application meetings can also take the form of a meeting held before the planning commission, open to the public. In some places this is called a sketch plan or conceptual review. These names reflect the fact that the applicant is basically sketching out in broad terms what they'd like to do, without providing detailed plans. Sketch plan review can also be helpful in identifying potential concerns before the development application is finalized. *Sketch Plan Review*, p. 3.

One other approach is to have a more specialized advisory board – focusing on design review or conservation issues – conduct a preliminary review of the

The Origins of Public Hearings in Planning & Zoning

Public hearings were essential components of both the Standard State Zoning and City Planning Enabling Acts of the 1920s. These model laws served as the basis for most states' planning and zoning enabling laws, and their provisions largely remain the law today.

It's fascinating to see the reasoning behind the public hearing requirement. Here's the explanatory note from the Planning Enabling Act:

"The public hearing ... has at least two values of importance. One of these is

that those who are or may be dissatisfied with the plan, for economic, sentimental, or other reasons, will have the opportunity to present their objections and thus get the satisfaction of having their objections produce amendments which they desire, or at least the feeling that their objections have been given courteous and thorough consideration. The other great value of the public hearing is as an educating force; that is, it draws the public's attention to the plan, cause some members of the public to examine it, to discuss it, to hear about it, and gets publicity upon the plan and planning. Thus the plan begins its life with some public interest in it and recognition of its importance."

project and forward its recommendations to the planning commission. Often, these citizen boards include members with special expertise or training, and can provide valuable insights on challenging aspects of a project. The downside, of course, is that they add another layer of review, lengthening the process.

- **SALEM, NEW HAMPSHIRE** Town Planning Director Ross Moldoff, AICP, notes that preliminary meetings (called “conceptual discussions” in Salem) “can help flesh out the major issues by giving the planning board a chance for input, and letting abutters raise their concerns before the applicant is locked into a particular layout.” As Moldoff further explains: “We don’t have any criteria to identify such projects, but it’s anything large or complex. Most applicants appreciate the opportunity for feedback before they do all the costly engineering work.”

- Carolyn Baldwin, a long-time New Hampshire land use lawyer, echoes Moldoff’s endorsement of these preliminary discussions. Even though, she notes, “comments at this stage are not binding on either party,” the informal pre-application process “gives both the board and the applicant an opportunity to assess any public opposition and take steps to ameliorate the objections, if possible.”

- “There is nothing more frustrating as a planning commissioner,” says David Foster, a member of the **SANTA CRUZ, CALIFORNIA**, Planning Commission, “than to have a project come for the first time to the commission with six months of design and engineering work behind it and a vested interest by both the applicant and city planning staff in the plans as prepared.” As Foster observes, “this often results in the commission feeling that they are being obstructionist to

¹ For more on the problem with ex-parte contacts, see Greg Dale’s “Ex-Parte Contacts,” *PCJ* #2 (Jan./Feb. 1992) and “Revisiting Ex-Parte Contacts,” *PCJ* #70 (Spring 2008); available to order & download respectively at: www.plannersweb.com/wfiles/w516.html and [.../w129.html](http://www.plannersweb.com/wfiles/w5129.html).

² Brookline’s “Major Impact Project” review process, which outlines the Design Advisory Team process is set out in Sec. 5.09 of the city’s zoning bylaw; available through: www.brooklinema.gov/planning.

request anything more than color or window placement changes.” “Early review of schematic designs,” he says, “can really open the door to much more creative thinking about things like building massing and possible variances that might allow for a better fit with the neighbors and dealing with site constraints.”

- There are potential downsides to informal, preliminary meetings. **WOODSTOCK, CONNECTICUT**, Town Planner Delia P. Fey, AICP, raises two red flags. First, if there are no submission standards, applicants can come in with presentations ranging from “the equivalent of a sketch on the back of a paper bag” to “professionally prepared plans.” Second, the planning commission may be “worried, correctly, about predetermining their vote and may not give very clear advice to the applicant.” As a result, Fey notes, “the applicant sometimes leaves seeming to be more confused than when they came in.”

- Connecticut land use attorney Timothy Bates also advises that these kind of meetings should only occur before a development application is filed. Once an application has been filed and the formal review process begun, Bates notes, “it is inappropriate for discussions to occur in any substantive way outside the public hearing process” since they would constitute ex-parte contacts.¹

- **BROOKLINE, MASSACHUSETTS**, Director of Planning & Community Development Jeff Levine, AICP, says that: “Having a ‘design advisory team’ of professionals who live in the community can be a good middle ground between just staff and the full planning board. The only drawback is that residents call for a design advisory team on projects that are really too small to have this additional layer of review, but that is the exception.”²

2. Hold a Meeting in the Neighborhood

Another strategy that can reduce the likelihood of contentious hearings is to request an applicant to first meet with abutters and other neighbors. These meetings are usually organized by the applicant, though sometimes neighborhood associations sponsor them.



What’s Planning Got to Do With This?

Let’s not forget that perhaps the single most effective way of reducing the number of contentious hearings is by dealing with difficult issues during the long-range planning process. After all, planner Anne Krieg reminded me during a phone conversation, isn’t this one of the points of putting together a comprehensive plan?

Elaine Cogan has also observed that “people with strong opinions always will find ways to be heard. But isn’t it at least as valuable, or even more informative, to learn what less vocal but still concerned folk think? In an ideal world, we can engage them before the controversy erupts.”

– From *Now that You’re on Board* (Planning Commissioners Journal 2006).

Some cities and counties require neighborhood meetings on applications that have to go through a public hearing process (not applications that can be approved administratively). Most planners I spoke with saw value in neighborhood meetings, especially for larger or controversial projects – though several added cautionary notes.

- **LA PAZ COUNTY, ARIZONA**, Community Development Director Scott Bernhart, AICP, CFM, told me that he’s “had success with work sessions in a community setting (in one case on site) with several planning commissioners present to observe neighborhood concerns.” Bernhart adds that “these published and open meetings are normally conducted by the developer or a representative with staff attending.”

- Florida planner Larry Pflueger says that one of the benefits of early neighbor-

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hood meetings attended by planning staff is that “they tend to dampen local criticism because the people get to look at the proposal before it gets into the official planning board review process.” Pflueger believes that, “most of the time it seems that people fear the unknown so if the project is brought to them, they can see what is really being proposed rather than just hear the rumors about the project.”

A related benefit, Pflueger notes, is that staff hear “what the real and perceived problems may be ... and if the problems cannot be put to rest at the neighborhood meeting, staff at least know what to concentrate on during its review and can point out the problem to the planning board prior to its meeting so that the board is not surprised when people show up.”

• In **ARVADA, COLORADO**, applicants for rezonings, major subdivisions, PUDs, and conditional use permits are typically required to hold a neighborhood meeting at least twenty-one days before the plan-

ning commission hearing.³ According to Senior Planner Gary Hammond, planning department staff (but not commissioners) attend these meetings and respond to any questions that come up about how the development review process works.

Hammond has found neighborhood meetings helpful since they give applicants a clearer sense of neighbors' concerns and an early opportunity to respond to them. At the same time, the meetings often “work to quell rumors residents have heard about what is going in.” Copies of a summary of the meeting are provided to the planning commission before the public hearing. Applicants must indicate how they intend to address (or why they are unwilling or unable to address) concerns, issues, or problems expressed during the meeting.

• In **LAFAYETTE, COLORADO**, says Community Development Director Phillip



Patterson, AICP: “We require applicants to provide comment cards to the participants of neighborhood meetings. This way the developer/applicant isn't in a position to ‘summarize’ the neighborhood's comments.” Patterson also adds “we caution applicants on the format of their neighborhood meetings.” As he explains: “Formal meetings, where a single presentation is made to a large group, can cause issues. While many of the attendees may be opposed to the project and are willing to speak, there may be others who support the project but are uncomfortable speaking out before their neighbors.” As an alternative, “we encourage an open house type format where there are many representatives from the applicant available to speak one-on-one with members of the public.”

While neighborhood meetings are also required for certain projects in **BAR HARBOR, MAINE**, Planning Director Anne Krieg, AICP, adds this note: “They seem to be effective in fleshing out the issues outside the hearing process, but they can backfire too, as they often give abutters a sense of empowerment that they don't have.” That's because, she says, “the final review, deliberation, and decision rests with the planning board ... and when the planning board approves something the neighbors didn't like, but meets the ordinance, there is animosity at the end.”

3. Have a Plan for Citizen Participation

Do you have a plan for how you involve the public in zoning and comprehensive plan amendments, as well as site

³ For the text of the Arvada ordinance: <http://arvada.org/city-services/land-development-code>. Then look for Article 3.1.6 - Neighborhood Meetings.



★ Editor's Note: The following is from Bar Harbor, Maine's land use ordinance.

Sketch Plan Review

A. Contents. Prior to requesting a review of a proposed subdivision plan ... an applicant shall submit a preapplication sketch which shall show ... the proposed layout of the streets, lots and other features in relation to existing conditions.

The sketch plan shall be accompanied by:

- (1) A copy of that portion of a USGS topographic map encompassing the site;
- (2) Any written request for the waiver of submissions that the applicant intends to submit pursuant to §125-63;
- (3) An outline of data on existing covenants, medium-intensity soil survey and soil interpretation sheets, and available community facilities and utilities, and by information describing the subdivision proposal such as number of residential lots, typical lot width and depth, price range, business areas, playgrounds, park areas and other public areas, proposed protective covenants, and proposed utili-

ties and street improvements.

... C. Review of sketch plan ... the Planning Board shall entertain brief public comment on the proposal for the limited purpose of informing the applicant of the nature of any public concerns about the project so that such concerns may be considered by the applicant in preparing his/her application.

(1) Upon its review of a preapplication sketch plan, the Planning Board shall:

(a) Set a date for a site inspection ... within 30 days;

(b) Make specific suggestions to be incorporated by the applicant in subsequent submissions;


(c) Act on the applicant's request for submission waivers, if any;

(d) Determine the need to hold a neighborhood meeting in accordance with §125-74A.

... F. Rights not vested. The submission or review of or public comments about a preapplication sketch plan or the conduct of a site inspection shall not be construed to be a substantive review of the proposed subdivision as defined by 1 M.R.S.A. § 302...

plan, subdivision, planned development, and conditional use application reviews? The extent and methods of public participation may vary, but it makes sense to have written procedures or protocols in place and available to the public.

- Arizona law requires cities and counties to adopt procedures for “early and continuous public participation.”⁴ In GLENDALE, ARIZONA, for example, the city requires applicants to prepare a Citizen Participation (CP) Plan for staff review.⁵ According to Tabitha Perry, a principal planner for the city, depending on the circumstances, the applicant may be asked to hold a neighborhood meeting before the public hearing.

The purpose of the CP Plan, Perry says, “is to ensure that applicants pursue early and effective citizen participation in conjunction with their land use applications.” It gives them the opportunity “to understand and try to mitigate any real or perceived impacts their application may have.” As a result, she observes, “most of the times we don’t get any surprises” at the planning commission public hearing.  *Citizen Participation Plan*

- When complex plans or zoning amendments are at issue, it is especially important to provide citizens with the opportunity to provide input early in the process. As Eric Damian Kelly and Barbara Becker have noted in their book *Community Planning: An Introduction to*

4 See Arizona Revised Statutes, “The governing body shall: adopt written procedures to provide effective, early and continuous public participation in the development and major amendment of general plans. ...” Title 9, Sec. 461-06. For rezonings, “... adjacent landowners and other potentially affected citizens will be provided an opportunity to express any issues or concerns that they may have with the proposed rezoning before the public hearing. Title 9, Sec. 462-03 (emphasis added). Similar provisions apply to counties.

5 Glendale’s “Citizen Participation & Public Notification Manual” (Sept. 1, 2009) is available to download on the PlannersWeb Public Hearings Resource page: www.plannersweb.com/hearings.html

6 Eric Damian Kelly and Barbara Becker, *Community Planning: An Introduction to the Comprehensive Plan* (Island Press, 2000), p. 118.

7 These Guidelines are included in a Sidebar to Greg Dale’s, “Site Visits: Necessary But Tricky,” *PCJ* #39 (Summer 2000); available to order & download at: www.plannersweb.com/wfiles/w346.html.



Editor’s Note: The following is excerpted from the City of Glendale, Arizona’s zoning ordinance.

The ordinance requirements are implemented in the city’s “Citizen Participation & Public Notification Manual,” available to download on our Public Hearings Resource page: www.plannersweb.com/hearings.html.

Citizen Participation Plan

... (d) At a minimum the citizen participation plan shall include the following information:

- (1) Which residents, property owners, interested parties, political jurisdictions and public agencies may be affected by the application;
- (2) How those interested in and potentially affected by an application will be notified that an application has been made;
- (3) How those interested and potentially affected parties will be informed of

the substance of the change, amendment, or development proposed by the application;

(4) How those affected or otherwise interested will be provided an opportunity to discuss the applicant’s proposal with the applicant and express any concerns, issues, or problems they may have with the proposal in advance of the public hearing;

(5) The applicant’s schedule for completion of the citizen participation plan;

(6) How the applicant will keep the planning department informed on the status of their citizen participation efforts.


(e) The level of citizen interest and area of involvement will vary depending on the nature of the application and the location of the site. The target area for early notification will be determined by the applicant after consultation with the planning department. ...

the Comprehensive Plan: “At a public hearing on a complex plan – whether 23 pages or 223 pages – that has evolved from a year-long effort by the planning body, it is much more difficult for citizens to participate meaningfully ... At that stage in the planning process, both the planning body and the project budget are likely to be nearing exhaustion.”⁶

4. Conduct a Site Visit

After an application for a development project has been filed, but before the public hearing, many planning commissions conduct a site visit. Besides the benefits this provides commissioners in being able to better visualize the proposal, it can also serve as a vehicle for resolving – or at least understanding – neighbors’ concerns.

Site visits call for staff or the Chair to go over the “ground rules” right at the start of the walk, and then make sure that discussions take place only when everyone in the group is together.

 Anne Krieg has found that site visits “allow discussions to be a little more informal.” But she also notes that during site visits she often becomes “the conversation police” in order to “make

sure there isn’t any unintentional ex-parte communication.”

- Ken Lerner, Assistant Planning Director for BURLINGTON, VERMONT, has noted that: “Site visits are a critical part of the review process for major projects. We formally announce the time and place of any site visit during the public hearing on a project. Members of the public are welcome to attend. In order to help avoid ex-parte contacts and inappropriate comments during the site visit, we have prepared ‘site visit guidelines’ which are distributed to all those attending the site visit. In addition, either the commission Chair or a staff member verbally summarizes the guidelines at the start of the visit.”⁷

Author’s note: Having participated in quite a few site visits myself, I can attest to the above points. As a planning commissioner, I’ve seen neighbors and the applicant engage in conversations during site visits that have clarified important issues and concerns. But I’ve also heard concerns raised about commissioners who veer off into private side conversations with either representatives of the applicant or with neighbors. Even if they

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were just chatting about the weather or last night's ball game, someone observing from several yards away may believe something of greater substance was being discussed.

5. Make Your Meeting Noticeable

Providing adequate notice of meetings at which a project will be reviewed is essential. As Christine Mueller points out, the number one complaint she hears in DEARBORN COUNTY, INDIANA, is people saying "we didn't know about it."

Many planners and planning commissioners may view this as the kind of complaint that no amount of notice will ever totally eliminate. Nevertheless, it makes sense to review your public notice policies to see if you're consistently reaching those who might have a concern about a project. In today's online age, there's also

Online Tools & Public Participation

In a thoughtful series of articles on his web blog, Rob Goodspeed, a PhD student in urban studies and planning at MIT, addresses public participation in light of the rapidly increasing use of the Internet. For Goodspeed, online tools can supplement the use of public hearings. They are valuable in providing additional opportunities for public input and in allowing citizens to track issues and projects they're most interested in.

As Goodspeed notes: "The Internet is the ideal 'home base' for any multidimensional strategy for several reasons. It is increasingly the repository for disclosing government information. For this reason government officials often post meeting minutes, reports, and other documents of presumptive public interest."

"Also its persistent character means it is ideal to store reference or archival information for review at any time and place with a connection."

See "The Internet as a Participation Tool," Goodspeed Update (<http://goodspeedupdate.com/2008/2225>; posted June 26, 2008).



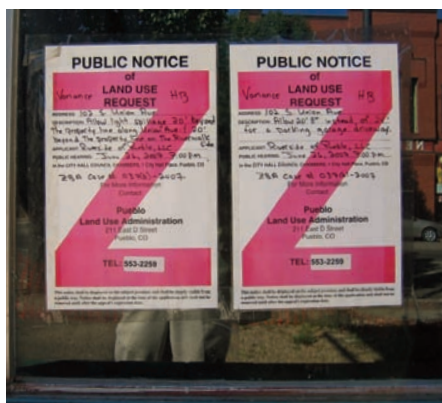
The Village of Mount Prospect, Illinois, and the City of Troy, Michigan (above) are among the growing number of communities that broadcast their planning commission meetings live.



really no excuse for not posting information about upcoming hearings on your municipal web site and using other online tools.

• Carolyn Braun, Planning Director for ANOKA, MINNESOTA, suggests that when mailing out notices: "Include an additional paragraph – beyond the legal text – that explains, as simply as possible, the proposed development or request. Also, make it clear that comments can be mailed or emailed if they cannot make the meeting."

• Little things can also make a difference, such as making sure that application notices are designed to be highly visible, and spot checking to see that notices are not hidden behind screen doors or tucked away in obscure locations. A growing number of cities and towns, like PUEBLO, COLORADO (photo below) have switched to bold, easy-to-spot zoning notice signs.



• Web sites and online social media can supplement posted and mailed public notices. For example, just in the past several months dozens of cities have started to use Twitter to announce upcoming meetings and post links to agendas and meeting minutes (see some

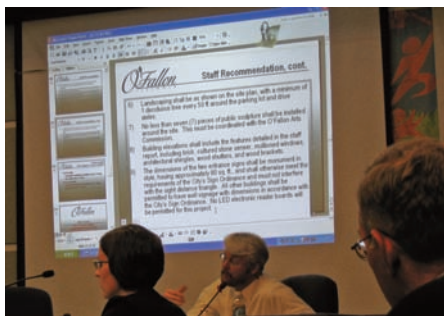
of the municipal "tweets" posted on Nov. 15, 2009).



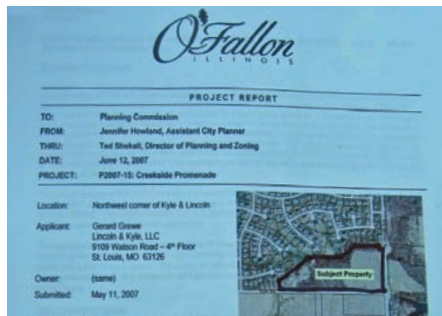
• Cable television has enabled many communities to broadcast public hearings. Some are even experimenting with allowing for public comment to be provided interactively. Cable can also allow for summaries of upcoming meeting agendas to be broadcast a few days in advance. For several years in BURLINGTON, VERMONT, the local public access channel broadcast a twenty minute show during which one of the city's planners took viewers on a "tour" of projects on the next agenda, providing a visual overview of each project.

6. Review the Agenda

It can be quite helpful for the Planning Director to meet with the Chair in advance of the meeting to go over the agenda and discuss the likely time requirements for each project. They can also identify potential problems or areas of controversy. The end result is having



In O'Fallon, Illinois, staff recommendations and project reports are available as handouts and displayed on the hearing room screen.



the Chair more comfortable in running the meeting. It also almost goes without saying that all members of the commission should have the meeting agenda and packet in hand at least several days in advance.

• PCJ columnist Elaine Cogan suggests putting controversial items early in the agenda. “Too often, planners still put [the issues which most concern the public] last or next to last on the agenda even though they are well aware of one or more matters certain to attract a big crowd. It is no wonder that people get restless and cranky if they have to sit through several hours of deliberations that do not concern them.”⁸

DURING THE HEARING

7. Make Your Introductions Count

Open your meeting by introducing members of the commission and staff, and then explain how the meeting will be conducted and when public comments will be allowed. These first few minutes can go a long way towards reducing tensions at public hearings.

It's important to remember that for many members of the public, this may be their first time at a planning board meeting. Things that may seem matter-of-fact to you as a commissioner may seem mysterious or confusing to members of the public – a problem compounded by the jargon and acronyms often used when discussing planning issues. The only remedy is to take the time to go over the basics and explain terminology that's likely to be unclear.

Related to this, be sure to have plenty

of copies of the agenda available, as well as handouts related to the applications under review, such as project summaries or staff recommendations.

• David Preece, AICP, Executive Director of the SOUTHERN NEW HAMPSHIRE Planning Commission, offers several common-sense suggestions: (1) have the Chair, not staff, start the meeting by going over its purpose, and describing the basic ground rules; (2) remember to have a sign-in list so people can receive a copy of the minutes and be alerted to any

future meetings related to the application; and (3) have staff provide as objective as possible overview of each application.

8. Stay on Target

Planning commission meetings can go more smoothly, and take less time, when applicants clearly describe their project and how it meets the land use ordinance's review criteria. While the quality of the presentation is largely out of the commission's hands, planning staff can help ensure that pertinent, helpful information is provided.

Public confusion and anger at meetings can also be reduced when staff provide a clear summary of the project, an explanation of the relevant review criteria, and, if it's your community's practice, their recommendations on how the project meets or fails to meet these criteria. Consider also making any written staff

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Mediation & Consensus Building

by Kate Harvey

Across the country, many permit decisions on local land use applications unnecessarily end up in protracted litigation. While some of these disputes may in fact require litigation, many end up in court because the parties were never offered an opportunity for another way to resolve their dispute.

Several studies by the Lincoln Institute of Land Policy and the Consensus Building Institute have demonstrated that mediation and consensus building can be effective in resolving land use disputes.

Mediation is a way to resolve disputes that relies on the assistance of a trained neutral who works with the parties to develop voluntary solutions that are acceptable to all the parties.

Consensus building uses a set of techniques to help many diverse parties reach mutually acceptable agreements. It usually relies on non-partisan professionals to facilitate the process and typically includes five key steps: convening; clarifying responsibilities; deliberating; deciding; and implementing agreements.

These processes create opportunities for parties to understand and align divergent interests, develop creative solutions, build agreement on outcomes that all parties find acceptable, and plan for resolving “predictable” disputes related to implementation. Successful mediation and consensus building processes require selecting the right case, at the right time, and matching them with appropriate neutral assistance.

Increasing the use of mediation and other facilitated processes in the land use permit and appeal processes can reduce the burden on valuable judicial resources, save the parties time and money, and perhaps most importantly, resolve disputes that otherwise would divide the community into opposing camps.

Kate Harvey is an Associate at The Consensus Building Institute, Inc., where she works as a facilitator, mediator, researcher, and project manager. For a more in-depth look at this topic, including responses to frequently asked questions, see “Building Consensus: Dealing with Controversial Land Use Issues & Disputes,” by Lawrence Suskind & Patrick Field in PCJ #48, Fall 2002, available to order & download at: www.plannersweb.com/wfiles/w168.html

⁸ Elaine Cogan, “First on the Agenda is the Agenda!” PCJ #49 (Winter 2003); available to order & download at: www.plannersweb.com/wfiles/w251.html.

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recommendations available to the public; this can reduce public distrust of the review process and allow for better focused comments.

- **WICHITA, KANSAS**, planning consultant and attorney C. Bickley Foster, AICP, recommends using check lists to help keep a planning commission or zoning board on track and avoid technical errors. “We have hearing and decision making check lists for all zoning and subdivision matters, including sample motions. These were tested again last year when we provided consulting assistance on five casino cases. We have found them to be very useful, especially for contentious public hearings.”

9. Have Visible Information

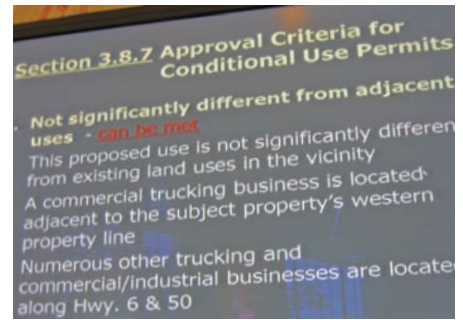
With laptop computers and screens or monitors readily available, there’s little reason why maps, photos, charts, and other exhibits shouldn’t be visible to all attending the hearing. There can be nothing as frustrating for a member of the public than not being able to see what an applicant is showing members of the planning commission.

Some communities also require applicants for larger projects to provide 3D models – either actual, physical models or computer simulations.

- Delia Fey told me how the use of laptops and projectors at planning meetings has been a big plus in her town of **WOODSTOCK, CONNECTICUT** (population 7,800): “Applicants used to bring their plans in and put them on an easel for the Commission to see. The audience could hear it but couldn’t see it. Now, we have joined the modern age and require the applicant to bring digital images so we can project them on the screen with the laptop and computer projector. Even for a small town, it is not that expensive

Get Some Training

Planning Director David Preece recommends holding a planning commission training session to discuss how to run and participate at meetings, and how to deal with difficult behaviors that may come up.



The display of information can be of great benefit to members of the public. Top row: Mesa County, Colorado, Planning Commission public hearing; bottom left: Jefferson City, Missouri, Planning Commission hearing; bottom right: hearing before the O’Fallon, Illinois, Planning Commission.

to do. That way everyone, including the audience, is looking at the same plans.”

- In **MESA COUNTY, COLORADO**, and **O’FALLON, ILLINOIS**, planning department staff also post the review criteria and their recommendations for each application on large monitors in the meeting room while giving their summary of the project. This clearly informs the public just what is relevant to the commission’s review.

- Phillip Patterson says that in **LAFAYETTE, COLORADO**, “for larger developments we have been asking developers to present 3D models of their projects using Sketchup [a software program] to create fly-bys so that the planning commission and the public can get a better sense of the scale of the project and the actual design.”

10. Allocate Time to Foster Useful Input

One challenge facing planning commissions when dealing with controversial applications is how to allow the applicant and members of the public adequate time to provide their presentations, comments, and questions – and, at the same time, avoid having hearings drag on late into the night.

There is also the need to get construc-

tive input in a way that is helpful to the commission in reaching its decision. While many planning commissions set specific time limits for comments by members of the public, there may be better approaches, especially for complex projects. This includes opportunities for input and discussion in advance of the hearing (see also Tips 1-3).

- For complex applications, attorney Timothy Bates recommends setting, in advance of the hearing, time limits for the applicant and for any major interveners or abutters who have hired experts. Bates also suggests that “the Chair should encourage everyone who wishes to speak, but also say that if someone else has said more or less what they were going to say, they can limit their comments to endorsing the position previously taken.”

- Another time-saving recommendation from Bates: “Avoid, if at all possible, having the Secretary read into the record letters and reports. The Secretary should report what letters and reports have been received and generally what they say and enter them in the record.” As Bates explains, “forcing an unhappy public to sit there while each letter is read word for word simply raises the anger level.”

Former PCJ Editorial Board Member Wayne Lemmon offered an interesting option.⁹ “In the typical public hearing format, you get a long list of pro and con speakers that line up for hours of very repetitive three-minute statements. What I have seen work effectively is this: if there are organized or even just semi-organized groups (citizens for the plan / citizens against the plan), invite their leaders to make organized presentations of, say, fifteen minutes each, limiting those invitations to just the primary factions that can be identified. You’ll get truly articulate and well-marshaled arguments for and against. Moreover, the speakers (particularly the opponents) finally get a feeling that they’ve had a chance to lay out all their arguments.”

According to Lemmon: “Another benefit of this is that emotional and overhyped comments are minimized, and the overall tone of the meeting is much more civil. You still get to do a general hearing, but after the formal presentation session, the speaker list is much shorter.”

• David Preece suggests that the Chair not allow “back and forth” debates between members of the public and the applicant as this can be time-consuming and distracting.

11. Stay Cool: Recesses, Continuances, and Multi-Session Hearings

Don’t be afraid to take a short recess during your meeting. Staff may be able to quickly resolve a question that has come up, or you may get an opinion from your legal counsel on an important point.

Continuing a hearing to your next meeting can also allow for a cool-off period, or give the applicant a chance to respond to suggestions from commissioners and the public.

With complex hearings it sometimes makes sense to divide the hearing into two sessions, rather than hear from the

⁹ Wayne Lemmon passed away last winter, not long after providing feedback for this article. Lemmon was a long-time member of the *Planning Commissioners Journal’s* Editorial Advisory Board, and author of “Proforma 101: Getting Familiar With a Basic Tool of Real Estate Analysis” (PCJ #65, Winter 2007) and “The New “Active Adult” Housing” (PCJ #51, Summer 2003).

staff, applicant, supporters, and opponents, and have questions and discussions from commissioners, at a single meeting. If this is planned and announced in advance, it can also lower the heat at the initial session, as everyone knows that no immediate action will be taken.

• In MANCHESTER, VERMONT, says Planning Director Lee Krohn, AICP: “The use of a brief, mid-hearing recess has worked remarkably well on several occasions. We were able to resolve a key question of law or practice, and then keep the hearing moving forward. Since we had a crowd in the meeting room, it was simpler for the board and me to go to a small room to discuss in deliberative session, rather than inconvenience everyone else who would then have to mill about in the hallway. In other cases, we’ve simply called a five or ten minute recess to let everyone stretch – which can also help quite a bit in calming down overheated persons or emotions.”

• Gary Gelzer, Chairman of the GOODYEAR, ARIZONA, Planning Commission, told me that: “When we run into a situation where things are not going well, or when staff is recommending a denial, yet the applicant is insisting that we have the hearing and reach some sort of deci-

sion, we have come up with the following that we usually offer during the hearing: ‘Mr. Applicant, would you like a continuance or a denial?’ and then some additional comments on having heard both the pros and cons for the case. This offer, right from the dais, either by myself or one of the other commissioners, usually halts most testimony in its tracks. Then a hasty conference between the applicant and their lawyer takes place. The next pronouncement from the Chair is ‘I would suggest you work with staff to get these concerns ironed out so that we can make a decision on this case at the next meeting.’”

• Scott Wood, Assistant Director of the NEW ALBANY, INDIANA, City Plan Commission, explains that “we have used tabling to help cool temperatures down, but only when the plan commission has some element that seems to be a ‘deal breaker’ and they want staff to work with the applicant to see if there’s some way to make it palatable for all parties.”

Wood cautions, however, to be careful with this tactic “because the developer often gets the feeling that if they satisfy staff then the board or plan commission will also go along ... when they don’t go along, I get the grief!”

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Chairing the Meeting

“The critically important role of the chair of a planning board cannot be overemphasized. The planning process suffers if the chair is either weak and unfocused or too strong and intimidating. Always show fairness and do not express your personal opinions, except when it is time to vote. If you must speak out, turn over the gavel to your vice chair. However, exercise that prerogative sparingly. Fairness also means you give everyone a chance to speak and deal

quickly and decisively with those, either commission members or the public, who try to dominate the discussion.”

Excerpted from Elaine Cogan, “On Being An Effective Commission Chair,” from Now That You’re on Board: How to Survive ... and Thrive ... as a Planning Commissioner (Planning Comm’rs Journal 2006).



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Florida planner Larry Pflueger advises that: "The continuance should be to a date and time certain. That way, neither party can play games with the process, for example, the government stringing the applicant along over an extended period of time to get concessions it otherwise might not have obtained."

• In LAFAYETTE, COLORADO, says Phillip Patterson "a technique that we have used that has been very successful is to require a controversial or very technical development plan to have two hearings before the planning commission." As he explains: "The first hearing is only the presentation by staff and the applicant. The planning commission can ask questions for clarification purposes, and the public is invited, but planning commission and public comments are held until the second meeting. The purpose of this two-part hearing process is to give the planning commission and the public the opportunity to fully understand the proposal prior to hearing public comments. This has assisted in focusing public comments on the specifics of the development plan, and reduced, but not necessarily eliminated, inaccurate, irrational, and emotional comments."

12. Show Respect

The single most important factor in "lowering the temperature" of public hearings is the model set by the Chair and members of the commission. If planning commissioners remain respectful of

each other, of the applicant, of the public, and of staff, the odds of having a fruitful public hearing will be significantly improved.¹⁰ At least that's my observation from having served on a planning commission for over ten years, and having attended meetings in a variety of cities and towns across the country.

Being respectful includes obvious, but too often forgotten, points like: arriving on time; not engaging in side conversations during the hearing; being polite to members of the public; and staying awake and attentive throughout the hearing!

It can be hard for commissioners to maintain their composure in the face of verbal assaults from members of the public. In fact, the commission – through its Chair – has an obligation to maintain decorum in the hearing room. But this doesn't negate the need for commissioners to control their temper and show respect.

• Attorney Timothy Bates notes that it is important for the Chair "to caution the public against cheering or jeering and inform them that while the Commission is anxious to hear the substance of any concerns, it cannot be swayed by the popularity or lack thereof of a particular project."

• Over the years, PCJ columnist Elaine Cogan has provided numerous tips on how planning commissioners can best deal with difficult members of the public.¹¹ But Cogan also reminds us that: "It is important that you show respect to the questioner even when you doubt the question. People ask stupid questions... hostile ones... tough ones... all of which you and your colleagues should answer as well as you can, but always respectfully. Sometimes, you and a citizen will have to 'agree to disagree,' but you should never show anger or lose your temper."¹²

SUMMING UP:

Public hearings are an essential component of local democracy, allowing for public input on development applications, zoning cases, and comprehensive plan amendments. Given the significant role that public hearings play, it's not surprising that on complex or controver-

sial projects they can become acrimonious. There are a number of ways, however, in which planners and planning commissioners can reduce the heat at hearings, while ensuring that they serve as an important and productive vehicle for public input. ♦

Wayne Senville is Editor of the Planning Commissioners Journal. His previous articles and reports for the PCJ include "Libraries at the Heart of Our Communities," PCJ #75 (Summer 2009); "Downtown Futures," PCJ #69 (Winter 2008); "Crossing America," PCJ #68 (Fall 2007); and "Bright Ideas," PCJ #61 (Winter 2006). Senville has also served on the Burlington, Vermont, Planning Commission (1991-1999, and 2008-present, including three years as Chair).



Editor's Note:

Our "Consultants"

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¹⁰ Commissioners should never berate staff in public. It is uncalled for and can threaten the effective functioning of the commission. For more on this point, see Elaine Cogan's "Staff Needs a Little TLC, Too," PCJ #3 (Mar./Apr. 1992); available to order & download at: www.plannersweb.com/wfiles/w440.html.

¹¹ See, e.g., "Dealing With Difficult People Requires Finesse," PCJ #7 (Nov./Dec. 1992); available to order & download at: www.plannersweb.com/wfiles/w407.html, and "Meaningful Dialogue With the Public," PCJ #73 (Winter 2009); www.plannersweb.com/wfiles/w153.html.

¹² "Show Respect," from *Now That You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner* (Planning Comm'rs Journal 2006).

They're Not Necessarily Wrong

"Though the worst personal traits often come out at public hearings, people are not necessarily wrong because they are angry, obstreperous and noisy ... as annoying as they may be, try to overlook these so that you can understand and respond to the substance of their comments."

– Elaine Cogan, "Show Respect to All," in *Now that You're on Board: How to Survive ... and Thrive ... as a Planning Commissioner* (2006).