

EXHIBIT A


9/21/22 SPECIAL MEETING

9/20/22

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Planning Official Training

St. John, IN – September 21, 2022



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The Planning Workshop, Inc.
COMMUNITY PLANNING & DESIGN PARTNERS

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Plan Commission, BZA & Town Council

Tonight's Training Agenda

- I. Everyone's Role in Local Plan Process
 - a. Plan Commission
 - b. BZA
 - c. Town Council
- II. State & Local Law Decision Criteria
 - a. Plan Commission & Town Council
 - b. BZA
- III. Planning Official Ethics: State Law
- IV. Best Practices: Processes & Regulations V.Q & A

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Who Does What?

Everyone's Role in the Local Planning Process

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Your Responsibilities

Role of all Public Officials

Public Officials include:

- Town Council
- Plan Commission
- BZA

- 1) To represent the rest of the community.
 - How does the community give you direction (2 ways)?
- 2) To educate yourself and others on the issue(s).
- 3) To support the process and recognize the roles of the other participants.
- 4) To make a defensible decision.

Planning Policymakers

Role of all Public Officials

- Act as trustees of the community's future
 - Share fundamental goal: **Improve your Community**
- Be Proactive, not Reactive
- Prevent growth patterns that result in wasteful and inefficient use of public resources
- Establish and implement public policy for the community (guideline for development)
- Ensure needs of the whole community are considered, not just benefits to individuals
 - *Like it or not, public officials wear that hat in their everyday lives - what you do or say reflects on the Town*

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What is the Town Council's ROLE?

1. Elected legislative body – Town Council
2. Power to adopt Comprehensive Plan by resolution
3. Power to adopt Unified Development Ordinance (zoning + subdivision) as law
4. Power to approve Rezoning
5. Appoints BZA & Plan Commission members
6. \$
7. *It gets weird in the Region with use variances & special exceptions!*

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What is Plan Commission's ROLE?

1. Appointed or serve by virtue of office
 2. Prepares* Comprehensive Plan & Amendments
 3. Prepares* Zoning & Subdivision Ordinances & Amendments
 4. Provides Rezoning Recommendations
 5. Provides Comp Plan & Zoning Ordinance Recs after holding official public hearings
 6. Final Subdivision Plat Approval (& Development Plan, if applicable)
- * Prepared with assistance by staff, consultants, volunteers*

Plan Commission = traditionally the land use experts

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What is BZA's ROLE?

- BZA = the seekers of land use justice (the relief valve)**
1. Hears appeals of administrative (staff) decisions
 2. Hears development standard & use variance requests
 3. Hears special exception requests
 4. May also do interpretations, informal advice
 5. May also initiate lawsuits

***Also, point out parts of zoning ordinance that need "fixed" (i.e., variances granted regularly)**

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How do you make decisions?
State & Local Laws provide Criteria

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Plan Commission, BZA & Town Council

Why do you use criteria to make land use decisions?

- Decisions are not meant to be Random!
- Applicant must meet all criteria provided in State and Local Law for approval (see Indiana Case Law)

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Plan Commission, BZA & Town Council

Where do you find the decision criteria?

- Criteria are minimum standards... a checklist
- Intention is to make your decision easier and less subjective

State law provides criteria to use for:

- Rezoning (Plan Commission & Town Council)
- Development Standards Variances (BZA)
- Use Variances (BZA)

Local law is criteria for:

- Subdivision Plats & Waivers/Modifications of standards (Plan Commission)
- Development Plans, if used (Plan Commission)
- Special Exceptions (BZA)

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Plan Commission, BZA & Town Council

Why do you use criteria to make land use decisions?

Compliance with the Comprehensive Plan is the common criteria for land use decisions

- This means it is import to fund, regularly update and adopt the comprehensive plan and all the Town's other plans, studies, appendixes!

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Plan Commission

What do you consider for Subdivisions?

- There are no state law criteria to follow for Subdivision decisions
 - Each community sets their own local criteria as their subdivision ordinance (compliance with the entire subdivision ordinance is the single criterion)
 - Note: subdivision ordinances should have a general statement about complying with comprehensive plan
- Follow your standards -- if a proposed plat meets all your subdivision ordinance standards, you must approve it!
- *If you don't like your standards, change them!*

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Plan Commission

Can you grant Waivers to the Subdivision Ordinance?

- **Subdivision Waiver Criteria should be listed in Subdivision Ordinance**
 - Rely on what is unique about property, not financial constraints of developer!

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Plan Commission & Town Council

What do you consider for Rezoning?

Follow IC 36-7-4-603: The plan commission and the legislative body shall pay reasonable regard to:

- (1) the comprehensive plan;
- (2) current conditions and the character of current structures and uses in each district;
- (3) the most desirable use for which the land in each district is adapted;
- (4) the conservation of property values throughout the jurisdiction; and
- (5) responsible development and growth.

What does it mean to pay "reasonable regard"?

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Try it out: What is your Rezoning Decision?

- Applicant wants to rezone 10 A of undeveloped residentially zoned land to Industrial on local level street
- Adjacent uses are residential, row crops and low-scale commercial
- New Comprehensive Plan Future Land Use Map shows area as residential
- Anticipate new Comprehensive Plan directs Industrial development to collector or arterial level streets to handle heavy truck traffic
- Town needs economic development! New jobs and revenue from industrial taxes.
- **Review 5 rezoning criteria – what should you do?**

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Board of Zoning Appeals

Why do you have VARIANCES?

- Variances solve problems created by applying the generalities of the Zoning Ordinance to specific situations -- it introduces needed flexibility.
- For the unusual "Grey Areas"
- Variances mean you don't have to follow the same rules as everyone else
- Variances are meant to be occasional, not the rule.

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Board of Zoning Appeals

Variance from Developmental Standards:

This variance focuses on physical site modifications, including things like setbacks, building heights, parking requirements, landscaping, signs or other physical standards.

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Board of Zoning Appeals

What do you Consider for Development Standards Variances?

Follow IC 36-7-4-918.5

- (1) The approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property

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BZA & Town Council

Did you know you may add more criteria to protect the BZA and the Town?

Indiana Code 36-7-4-918.5 (a)(3) also allows communities to adopt extra development standards criteria!

"... your local ordinance may establish a stricter standard than the "practical difficulties" standard"

St John does not have any additional criteria in your zoning ordinance. Popular additions are:

- (4) The variance granted is the **minimum necessary**
- (5) The variance granted **does not correct a hardship caused by a former or current owner of the property**

Best Practice Tip: Indiana communities commonly add extra Development Standards Variance Criteria prescribed by State Law."

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BZA & Town Council

**Town Council,
Use Variances &
Special Exceptions**

- Unlike most of Indiana, BZA's in "the Region" do not make a final decision on use variances or special exceptions.
- BZA sends a recommendation to the Council:
 - (1) a favorable recommendation;
 - (2) an unfavorable recommendation; or
 - (3) no recommendation.
- Final determination is made by Town Council pursuant to I.C. 36-7-4-918.6
- Council must supply a written decision

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BZA & Town Council

Use Variance:

This type of variance allows a land use that is not permitted in the district where the property is located.

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BZA & Town Council

**What do you
consider for Use
Variances?**

Criteria follow IC 36-7-4-918.4

- (1) the approval will not be injurious to the public health, safety, morals, and general welfare of the community
- (2) the use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner
- (3) the need for the variance arises from some condition peculiar to the property involved

(continued on next slide)

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BZA & Town Council

**What do you
consider for Use
Variances?**

(continued from previous slide)

Follow IC 36-7-4-918.4

- (4) the strict application of the terms of the zoning ordinance will constitute an **unnecessary hardship** if applied to the property for which the variance is sought
- (5) the approval doesn't interfere substantially with the adopted **comprehensive plan**

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Try it out: What is your Use Variance Decision?

- Applicant wants use variance to allow coffee shop and bakery on 1 A of property zoned single-family residential, which does not allow that use. Property is a historic commercial property, containing a building almost 100 years old. It is currently vacant and is within downtown area neighborhood of older homes with some new infill housing. Comprehensive Plan Future Land Use Map shows area as residential
- Comprehensive Plan states that the new zoning ordinance should allow more "Mixed Use" and "Neighborhood Commercial" and implementation chapter says to set up new ordinance standards, but that has not happened yet
- Everyone knows this historic building and wondered what its fate would be
- The applicants are known for making fancy pastries they currently sell from their food truck
- **Review the 5 use variance criteria – what should you do?**

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BZA & Town Council

Why do you have Special Exceptions?

- "Case-by-Case" review of land use
- Special Exception may or may not be appropriate in zoning district, depending on the proposed site
- Community picks which land uses are special exceptions – often NIMBYs or unique uses (hospital, etc.)

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BZA's special exception Criteria

BZA & Town Council

What do you consider for Special Exceptions?

- **No State Law Criteria** – you are to set your own criteria – St John's Zoning Ordinance has basic criteria that apply to all Special Exceptions
- **Best practice for special exception criteria is to add extra criteria for certain uses**
- **Which special exceptions merit unique criteria?**

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BZA's special exception Criteria

BZA & Town Council

What do you consider for Special Exceptions?

St John Zoning Ordinance, Chapter 18, D, 6, (b)

- i) The establishment, maintenance or operation of the special use, special exception, contingent use, or conditional use will not be detrimental to or endanger the public health, safety, comfort, morals or general welfare;
- ii) The special exception, special use, contingent use, or conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted nor substantially diminish and impair property values within the neighborhood;
- iii) The establishment of the special exception, special use, contingent use or conditional use will not impeded the normal and orderly development and improvement of surrounding property for uses permitted in the district;

BZAs special exception Criteria

BZA & Town Council

What do you consider for Special Exceptions?

St John Zoning Ordinance, Chapter 18, D.6.(b), continued

iv) The special exception, special use, contingent use or conditional use shall be required to comply with reasonable time limitations on commencement and duration of special exception, special use, contingent use or conditional use as well as holder of rights to the same;

v) Adequate utilities, access roads, drainage and/or other necessary facilities will be provided;

vi) Adequate measures will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets; and

vii) The special exception, special use, contingent use, conditional use shall in all other respects conform to the applicable regulations of the Zoning District in which it is located.

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Plan Commission, BZA & Town Council

Do you have to formally document your decisions?

- Indiana Code & case law requires **Findings of Fact:**
 - **Primary Subdivision**
 - **Rezoning**
 - **Use Variance**
 - **Development Standards Variance**
 - **Special Exception**
- Findings of Fact should be based on the applicable criteria, state or local ("because...")
- Meeting minutes are not findings per case law!

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BZA: side yard setback variance EXAMPLE

Board of Zoning Appeals

What is a BZA written commitment example?

For a Side Yard Setback Variance for a 4-Plex Unit adjacent to Single-Family Residential

Good Commitment: Requiring the 4-plex owner construct a 6' tall opaque screen along the adjacent side yard.

Bad Commitment: Requiring the 4-plex owner to plant several street trees in the front yard of the house next door.

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Plan Commission

What is a Plan Commission written commitment example?

For a Rezoning to Commercial on a narrow parcel at intersection of local streets

- **Good Commitment:** Prohibiting a certain land use (i.e., a drive-thru), which would not fit the small lot without variances and could cause traffic safety issues.
- **Bad Commitment:** Requiring access drives on both streets with future development

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When can you deny a case?

1. when you don't have a quorum
2. if it is unpopular
3. if all criteria haven't been met

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What is EX-PARTE CONTACT and why is it illegal?

Basically means "contact outside the meeting"

Illegal for BZA per IC 36-7-4-920 (a)

- Because everyone should have opportunity to see, hear and examine the same statements and evidence
- What should Plan Commission do?

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Planning Official Ethics

From Indiana Code

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What are some Tips to Avoid Ex-parte Contact?

1. Don't meet or talk privately with anyone about a matter before you. If contact can't be avoided, disclose it at the public meeting. *To avoid this, add a note to list of BZA member names on your website.*
2. Never go on field trips with applicant or opponent. Visit site alone or with planning staff. Visiting as board or commission is a challenge to Indiana's "Open Door Law."
3. Don't initiate contact with the applicant or interested party – if you need more information, ask staff.
4. Beware ex-parte communication by phone or electronically (e-mails, texts, etc.)

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Discuss
EX-PARTE
CONTACT
Impedes Due
Process

- What should you do if an applicant asks to meet about a case?
- What if it is a surrounding property owner?
- What if you have read the staff report and want to bounce ideas off fellow members before the meeting?
- What if this discussion is done through e-mail?!

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How are
CONFLICTS
OF INTEREST
regulated?

Conflicts of interest are self-regulated under Indiana Law:

- Member may ask for guidance
- Report concerns/conflicts to Attorney/Director immediately, to ensure that the show will go on (appoint alternate members)!
- Recuse yourself from case where there is a conflict
 - *It is a Conflict even if you think it won't affect how you vote!*

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What CONFLICTS
OF INTEREST do
you need to
avoid?

IC §36-7-4-223 for Plan Commission
IC §36-7-4-909 for BZA

conflicts of interest shall include:

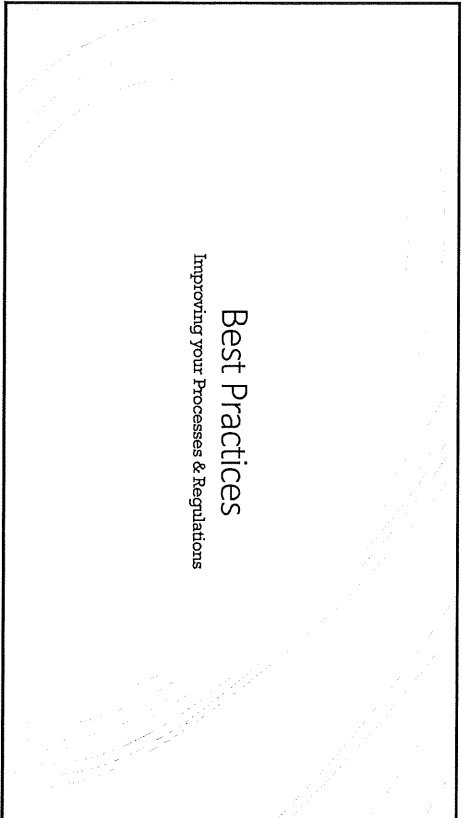
- **Direct Financial Interest** in a case
- **Indirect Financial Interest** in a case
- **Bias or Prejudice or Inability to be Impartial** about a case, applicant, owner or other involved party (new in 2011)

Indiana Case law has also declared conflict of interest if the situation weakens public confidence and undermines the public's sense of security for protection of individual rights in the exercise of your duties – PERCEPTION!

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What if I have a
CONFLICT OF
INTEREST?

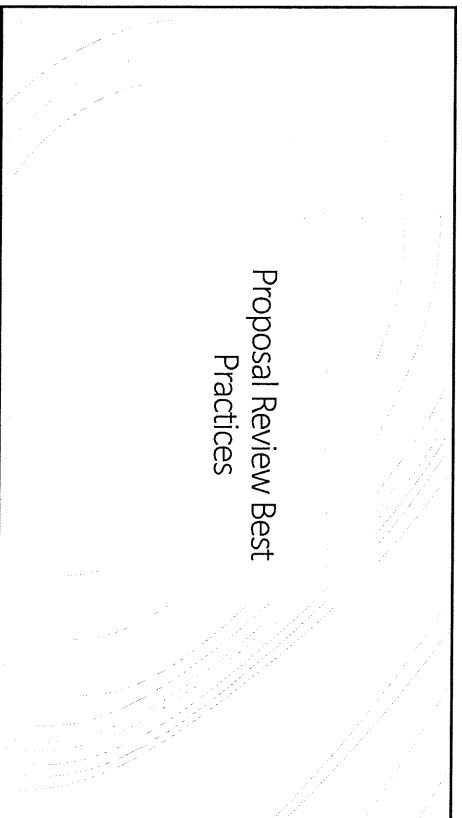
- Announce conflict at public meeting, so it becomes part of public record
- Direct or indirect financial interest should be interpreted to include any member who receives legal notice of a pending case as a surrounding property owner – *put this in your rules*
- A member should not represent herself/himself or any other on any matter before the BZA, Plan Commission or Town Council – *put this in your rules*
- Representation of another, whether paid or not, should be considered a conflict of interest – *put this in your rules*



Best Practices

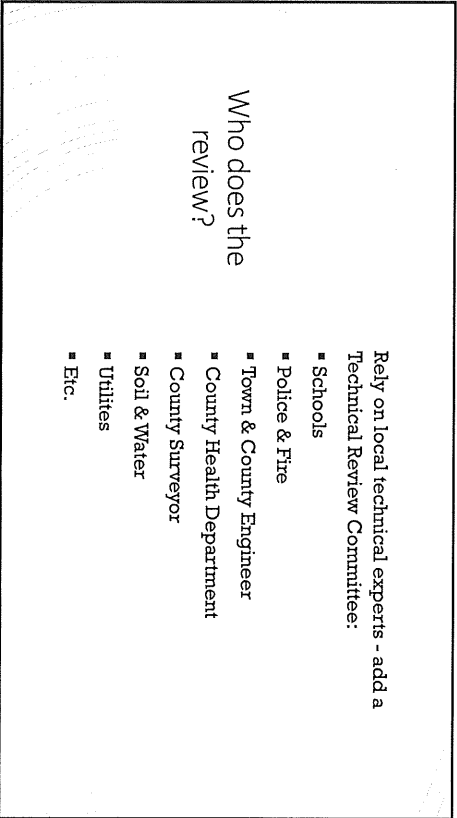
Improving your Processes & Regulations

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Proposal Review Best Practices

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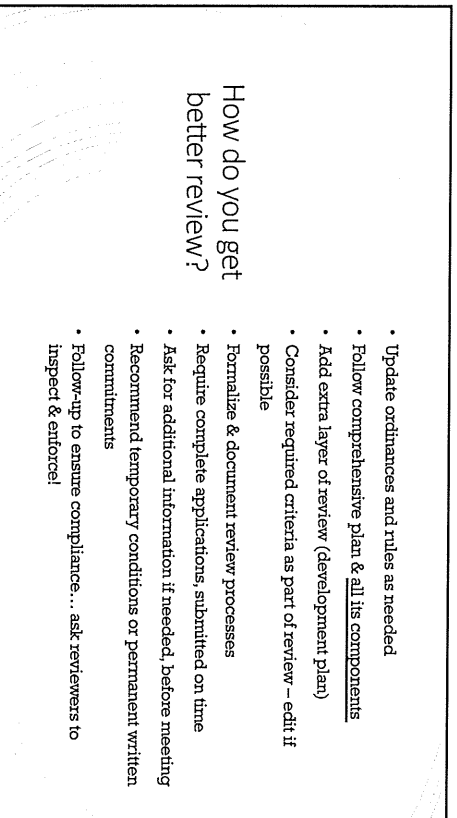


Who does the review?

Rely on local technical experts - add a Technical Review Committee:

- Schools
- Police & Fire
- Town & County Engineer
- County Health Department
- County Surveyor
- Soil & Water
- Utilities
- Etc.

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How do you get better review?

- Update ordinances and rules as needed
- Follow comprehensive plan & all its components
- Add extra layer of review (development plan)
- Consider required criteria as part of review – edit if possible
- Formalize & document review processes
- Require complete applications, submitted on time
- Ask for additional information if needed, before meeting
- Recommend temporary conditions or permanent written commitments
- Follow-up to ensure compliance... ask reviewers to inspect & enforce!

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How do you get more information to make better decisions?

- Do your requirements state clearly enough what must be submitted and shown on applications and drawings? If not, change them!
- Keep in mind that you and your Director may always ask for other information as needed - *Examples: traffic study, fiscal study, flood zone study*

Best Practice Tip: Keep submission "checklists" out of ordinance so that they may be changed more easily

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Public Meetings Best Practices

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Public Meeting ≠ Public Hearing

- A public meeting is simply a meeting that is open to the public; the public may attend and observe, but the audience does not have to be allowed to participate or make comments.
- A public hearing is a formal legal proceeding to receive public comment on a particular matter, such as a rezoning or a comprehensive plan.

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Use Public Meetings to get Work Done

- Consider regular work sessions - have a work plan!
- Appoint subcommittees as necessary - i.e., many Plan Commissions have Ordinance Revision Subcommittees

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about Public Hearings....

- Legal requirement and obligation to your citizens
- Not an ideal forum for communication -- more formal and structured than a public meeting
- Public hearings specified by law may not be enough -- we aren't just trying to meet the minimum legal standards
- Purpose is to hear testimony -- not a forum for public debate.
- If you do it right, you can also use a public hearing for education of attendees

Best Practice Tip: If you desire dialogue, discussion or negotiation, schedule a public meeting first

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Managing the Public Hearing

Typical President's/Chair's Routine

- Explain purpose of meeting and ground rules
- Explain what is on the agenda and how the meeting will work (time limits, etc.) -- warn them about continuances
- Follow your Rules (not Robert's)!
- Use the gavel if necessary

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Managing The Public Hearing

Chairing the Meeting

- Keep discussion focused on relevant issues
- Rule extraneous questions or comments as out of order
- If you allow that input, you are not being kind, you are just confusing the public by letting them think it is pertinent to your decision

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Managing The Public Hearing

Public Comment

- Hearings should be formally opened and closed
- No public comment taken at any other time
- President should cut off lengthy, irrelevant or repetitive comments

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Typical President's/Chair's Routine

Managing The Public Hearing

- Deliver a "play by play" or translation for the audience, when necessary and repeat/rephrase all questions
- Again, keep control of the meeting -- be firm when necessary and make sure all remarks go through the Board or Commission (not between opponents and proponents).

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Making a Decision

- Review criteria
- Have a public discussion
- Make sure your input is meaningful
- Explain yourself -- why are you voting this way?

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Decision-Making Concerns

- Decision-Making Concerns
- After public hearing, plan commission must arrive at decision or recommendation.
 - Issues often complicated, and decision-making is difficult.

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Decision-Making Concerns

- Decision-Making Concerns
- Peer Pressure -**
- Do not want to offend colleagues or appear to be unconventional or uncooperative.
 - Represent a variety of views & backgrounds, so fine if decisions aren't always unanimous.

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Decision-Making Concerns

Public Pressure

- Difficult to make unpopular decision, especially in small towns.
- Audience isn't always right; doesn't represent whole community.
- Proposed land use changes generate emotional responses

Decision-Making Concerns

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Decision-Making Concerns

Developer & Business Pressure

- Goal is to make a profit – that is not your responsibility!
- Don't accept inappropriate development to provide profits

Decision-Making Concerns

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Decision-Making Concerns

Political Pressure

- Occasionally elected officials lobby for certain votes.
- Plan commissions & BZA intended to be independent bodies – you are obligated to vote for good planning.

Decision-Making Concerns

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Decision-Making Concerns

Community Pressure

- You interact with people in daily lives who wish to influence opinion or vote
- Good practice to refrain from discussions, because interferences with due process and inconsistent with the goals of the open meeting law.
- If contact can't be avoided, explain that it will be reported at the public meeting.
- PUBLIC GOOD, not individual-based decisions
- The right decision may not always be popular!

Decision-Making Concerns

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Decision-Making Concerns

Compromise

- Want to find a middle position between developers and opponents. ...
- Leaves everyone unhappy when neither side gets what it wants.
- Developers quickly learn the compromise game, asking for more than they want or expect, in order to end up with the project they initially desired.
- Compromise works if Town can broker a rare win-win solution, but regular compromise won't result in good development!

Decision-Making Concerns

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PUD Best Practices

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Smart Growth Fix Example -- PUDs

PUDs intended to allow flexibility in design, take advantage of unique situation and be higher quality – examples are mixed-use developments or conservation/cluster subdivisions

- PUDs over-used; quicker/easier than fixing outdated zoning code or getting a bunch of variances!
- We created a monster!



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Smart Growth Fix Example -- PUDs

PUD Best Practices

- Remove or substantially reduce the need to use PUDs by fixing outdated districts -- just adopt preferred standards
- Create basic standards for PUDs as starting point (e.g., type of uses, open space, TND design standards)
- Establish PUD locations (by policy or future land use map)
- Establish minimum size parcel to use PUD
- Establish a list of community benefits (like trails) that can be traded for flexibility in use, density, etc.

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