

2. District Commission Hearing Procedure

A. Prior to the hearing, the chair should review the application with the coordinator and, to the extent possible, identify major issues presented in the case.

B. In most cases, a site visit should be conducted before the hearing. Sometimes it may be more helpful to conduct the site visit after the hearing when the issues have been determined. In either case, remember that any information developed at the site visit is not considered part of the record for the case unless it is brought before the commission at the hearing and entered onto the record. All observations of the commission should be noted on the record so that all parties have the opportunity to respond.

C. At the start of the hearing, the Chair should introduce the commission and the coordinator. Make sure the sign up sheet is circulating.

D. Open the process by reading the hearing notice. ("We are here today for application #) Briefly describe the hearing process:

1. If available, hand out criteria sheets to those who may not have one. You may also want to explain that the burden of proof is on applicant for criteria #1, 2, 3, 4, 9, and 10; burden of proof is on opposing parties for criteria #5, 6, 7, and 8.

2. Describe party status:

(a) "Statutory" parties: The Municipality, the Municipal and Regional Planning Commissions and State Agencies. The appropriate adjacent entities if the project site is located on a town or regional boundary.

(b) Adjoining landowners and other persons, to the extent that they have a "particularized interest" that may be affected by the project.

(c) Friends of the Commission: The Commission may allow nonparties to participate by filing memoranda, proposed findings of fact, and testifying or providing cross-examination. Rule 14(E)

(d) Commission witnesses (persons not qualifying for any of the above but whom the commission will allow to speak).

NOTE: Witnesses called by the commission do not have party status, they have no rights to cross examine, to make oral arguments, and they must make all questions and comments to the Commission, i.e. they cannot brow beat other parties or witnesses.

(e) Parties should express their interest, in favor of or opposed to the project.

(f) Party status gives right to appeal to the Environmental Court and ultimately to the Supreme Court under criteria for which status is granted.

(g) Explain that the commission will make preliminary determinations at the beginning of the hearing for adjoiners and other interested persons and then review those determinations and make final determinations before it issues a decision.

E. Have the applicant give a brief overview of the project, avoiding direct contact with the criteria. Also accept any "opening statements" from applicant. Allow petitions for party status.

F. Recess to deliberate, if necessary; determine preliminary party status for adjoiners and other interested persons and the criteria under which party status has been granted.

G. Announce preliminary party status determinations. Swear in all people who will be giving testimony including any lawyers who will be giving testimony. Generally, lawyers do not give testimony and normally do not take an oath.

"Do you solemnly swear that the evidence that you are about to give on the matter under consideration is the truth, the whole truth, and nothing but the truth?"

H. Request motions from parties, such as a motion to take the criteria out of order.

I. Review the Criteria. Prior to beginning the review, the Chair may announce that the commission has reviewed the application and determined that the application can serve as evidence under criteria . . . 1(C), 2, 4, 9(B), etc. Therefore, the Commission will take evidence on the remaining criteria only. Remind those who will speak to identify themselves before offering their testimony.

1. If there is a site visit, the commission should put key observations on the record to allow for rebuttal or public comment in response to the observations.

2. The applicant should proceed first; if criteria are to be taken out of order, as determined earlier, proceed accordingly. See Board Rules 17(C) and 21.

3. After the applicant presents its case under each criterion, the parties may cross-examine the applicant and its witnesses. Then each party will be given the opportunity to present its case and the applicant and other parties may cross-examine.

4. Any preliminary summary prepared by the coordinator is not considered evidence, nor is it a public document; it may be used as a format to conduct the hearing only. Evidence presented at the hearing must be relied upon to make a decision.

5. When the hearing has been completed, the Chair should announce that the hearing is in recess, pending the submittal of additional information by the applicant and/or other parties, which will be announced in a recess memo. Do not adjourn unless the record is complete and there are no outstanding unresolved issues. Please remember that formal adjournment starts the twenty day clock during which the commission must complete deliberations and render a decision.

J. A few final notes:

1. While proceeding through the criteria, it is effective to have all commissioners involved in asking questions. This prevents it from being a one person show.

2. It may be appropriate to ask for "proposed findings" from both applicant and parties in contested cases. This may help clarify the record.

3. The commission may deliberate immediately after the hearing, but, when the record is closed and the hearing adjourned, the twenty day clock starts. Oftentimes, the hearing will be recessed by the commission pending receipt of additional information, ANR permits and until deliberations are complete.

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