

## PLANNING COMMISSION MEETINGS

### Types of Planning Commission Meetings

The commission may use several different types of meetings in order to conduct its business. These include regular meetings, special meetings, and worksessions.

#### *Regular Meetings*

Regular meetings are the decision-making meetings and often are public hearings. The regular meeting date is often established in the ordinance governing the commission. Some ordinances allow the commission to determine when it will hold regular meetings by scheduling its regular meeting dates for the upcoming year by resolution. A commission should not rely on such resolutions as a substitute for the notice of meetings required by the Open Meetings Act without consulting first with the municipal attorney.

#### *Special Meetings*

Special meetings may be held under the conditions prescribed in the ordinance governing the commission. A common provision permits the commission chair or three members to call a special meeting. Reasonable public notice of the special meeting must be given. Often, the governing ordinance will limit the matters that may be acted on at a special meeting to those contained in the public notice. Some provide

an exception to this limitation if a supermajority approves an additional matter.

#### *Work Sessions*

Work sessions are valuable formats as they are much less formal than commission meetings and permit commission members to receive information and discuss matters in a relaxed manner. They are often used for initially dealing with more complex or lengthy matters. However, work sessions are viewed as something other than a commission meeting; the commission is not allowed to make motions or otherwise take action to resolve a question or make a decision.

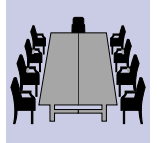
### The Planning Commission Meeting

#### *Be Prepared*

Each member should receive a copy of the meeting agenda, background reports, studies, and maps in advance of the scheduled meeting date. Commissioners should contact staff if they have any questions about the contents of the packet. If appropriate, and legal in your community, a site visit is helpful, especially for more controversial projects (see the section on ex parte contact in Chapter Four).

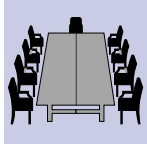
#### *Explain the meeting procedures at the beginning of the meeting*

Rules of procedure will make the meeting work more efficiently and effectively AND will make the job of the commissioner



### Planning Commission Meetings

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- The Planning Commission Meeting
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more enjoyable. The rules outline how the commission handles its business and include things like limits for speakers, managing the agenda, and procedures for deferring business. Testimony will be more relevant when people understand the basis for the decision. This information should be in the planning commission by-laws.

### *Be on time and start on time*

If the meeting is scheduled for 7 p.m., the meeting should start at 7 p.m. If you have to wait for one or two others to have a quorum, you are being unfair to all the people who came on time.

### *Show respect for the Chair*

Say Madam Chair, Mr. Chair, Chairman Brown, etc. This sets an example of orderliness.

### *Treat people equally; don't use first names*

If the first person to testify is referred to as Mr. Jones, refer to the next person as Mrs. Smith even if she's Susie, your sister-in-law.

### *Summarize what you have heard*

Comment on which facts are important to the decision and which facts are not.

Before the meeting is adjourned, the commission should determine if any action taken requires further attention before the next scheduled commission meeting. Debriefing occasionally also helps commissions become more effective. Discuss whether or not the meetings are

running well, if the procedures work, and if there are any changes needed.

### *Set the Agenda*

Have an agenda (sample below) that describes what will happen at the commission meeting.

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The meeting agenda might look like this:

- I. Call to Order
    - A. Roll Call
    - B. Approval of Agenda
    - C. Consent Agenda
  - II. Approval of Minutes
  - III. Public Hearing Items
  - IV. Old Business
  - V. New Business
  - VI. Committee Reports
  - VII. Items not Scheduled for Public Hearing
  - VIII. Commissioner Comments
  - IX. Adjournment
- 

Sticking to the agenda is basic to having a productive meeting. An agenda also provides structure and order for commission deliberations.

If possible, the agenda should be made available for public review a week before the meeting, but no fewer than three days, so the public has ample opportunity to review it. Some municipal attorneys believe that the agenda must be published in the notice of the meeting and that matters not on the published agenda may not be

acted on by the commission. You should confirm whether or not you could take action on items not on the agenda. You should make sure that your municipal attorney has approved your notice format and content.

***Provide Adequate Meeting Notice***

Adequate public notice of items that will be before the commission for its consideration is essential. This is not just because of legal requirements, but because it is simply good business keeping the public informed about matters before the commission. The public is in the position of providing supplementary information to the commission through public testimony.

The State of Alaska Open Meetings Act (AS 44.62.310) requires that all meetings of a public body such as a planning commission, be open to the public. More explicit information regarding the length of notice, where to publish or post the notice, and the kinds of information that should be contained in the notice should be in the your municipality’s ordinance establishing the planning commission or in another chapter of the municipal code dealing with public notice.

Notice requirements can include the following options. Use one or more that fits your community and your local ordinance requirements:

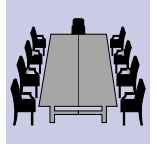
**Public Notice**

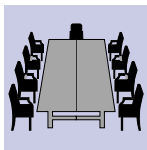
1. A notice in a paper of general circulation at least seven days in advance of the meeting which includes the matters to be considered, the time, and place of the meeting, and the place where documents relating to the matters may be reviewed.
2. A notice mailed to property owners who live within several hundred feet of a site that may be affected by a land-use action (i.e., subdivision, rezone, or variance).
3. Notices posted at conspicuous locations in the community such as the post office, store, health clinic, and city hall.
4. A notice posted at or near the site where a land-use action is proposed to take place.
5. If the community is served by radio, a notice may be broadcast as public service announcements (PSA). However, the PSA should not be relied upon for official notice as the station has no obligation to the municipality to make the announcements.

***Provide Adequate Meeting Space***

It is important to hold meetings in a room that is large and comfortable enough to use for the commission and the public. A stuffy, poorly lit or unventilated room or a room in which it is difficult to hear people talk, creates poor working conditions that could hinder the satisfactory conduct of

- The commission should work together as a team
- Everyone is important to the smooth functioning of the commission





### How does the commission make decisions?

- √ Using common sense
- √ Thinking about what is in the best interest of the larger community
- √ Considering the rules
- √ Using persuasion or arguments based on testimony
- √ Interpreting the comprehensive plan in accordance with legal requirements

business, particularly if a large crowd is present. Decisions can be easier to make if the meeting room is large enough, well lit, and comfortable to work in.

Select a meeting place that can be used regularly so the public will know, month-to-month, where the commission will be meeting. Make exceptions only when a large crowd is expected and more meeting space is needed. There should be adequate heating and ventilation and nearby rest rooms.

### Running a Meeting

#### *Role of the Chair*

The attitude and abilities of the chair are critical to the successful operation of the planning commission. A capable chair understands the issues, understands his or her fellow members, can maintain order, and is able to bring the commission to a decision even on complicated or controversial issues. A person should be named as chair for his or her leadership abilities in addition to having other qualities such as integrity and fairness.

The chair is somewhat "removed" from the meeting in that he or she may not participate as fully in the meeting as the other members. Since it is the chair's job to preside over the meeting in a neutral manner, he or she does not normally become involved in the commission's deliberations, except to lead the group toward making a decision.

#### *Responsibilities of the Chair*

The chair has two types of responsibilities: those contained in the commission's rules of procedure and those that are more related to his or her leadership abilities.

Responsibilities of the chair include:

**Running the meeting.** It is the chair's responsibility to run an orderly meeting and conduct the commission's business in a fair and timely manner. Other commissioners, the staff, and the public will look to the chair for leadership.

**Maintaining order.** Do not allow members of the public to clap, cheer, whistle, and so on either for or against testimony that is being presented or in response to comments by commission members during their deliberations. The chair should "gavel down" this kind of behavior and run an orderly meeting. Neither should the chair permit members of the commission to accuse or overtly challenge one another, members of the public, or persons testifying.

**Keeping business moving.** The commission should not endlessly mull over matters, continually request new information, and otherwise delay making a decision when the information needed for doing so has been presented. The chair should move the meeting along by summarizing the facts and the positions presented by commission members and bringing matters to a vote. Failure to do so is unfair to the governing body, which may be relying on

the commission's recommendation, and to the applicant, whose proposal may be unfairly delayed by indecision.

**Managing public testimony.** Testimony from witnesses should be held to a reasonable length of time, particularly if a large number of people want to address the commission. Testimony should pertain to the matter under deliberation. The chair should discourage successive witnesses from repeating the same testimony over and over again. The commission also needs to show that it is interested in what the witnesses have to say.

**Preventing arguments.** The chair should prevent sharp exchanges from occurring between commission members and persons testifying and between commission members themselves. He or she should limit the dialogue between commission members and persons testifying to fact gathering that will contribute to the commission's decision-making ability. This is important to prevent a loss of the commission's objectivity and credibility.

**Understanding parliamentary procedure.** Since either Robert's or Mason's Rules will usually be used, this is crucial to the chair's ability to run an orderly meeting. He or she must be familiar with parliamentary procedure. The chair must understand motions and amendments to motions, the order in which business is conducted, topics that are and are not debatable, and so on. Someone other than the chair may act as

the parliamentarian, but the chair should know the rules to conduct the meeting.

**Tying things together.** This is the ability to take into account public testimony, commission deliberations, and the issue at hand, in guiding the commission toward a decision. It is based on the chair's ability to discern a position that a majority of the commission can support and that is fair to the public.

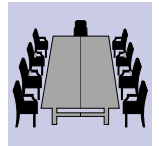
### *Qualities of a Good Chair*

The ability of the chair to run a meeting is important if the commission is to get its work done. Commission members will expect the chair to display leadership skills and to run well-organized and purposeful meetings. A good chair will be:

**Tactful.** The chair must show tact with other members and the public. A rude or insulting chair will reflect poorly on the whole commission and will alienate other commissioners and members of the community.

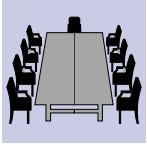
**Decisive.** The chair may have to think and act quickly in overseeing the conduct of the commission's business. This may include summarizing positions, clarifying motions, and giving direction to staff based on the differing views of commission members.

**Respectable.** A chair, whose judgment has been tested and found to be good, whose opinion is sought out, or who has support



“The very first thing a new commissioner needs know is about the meeting routine. They need to know how votes are cast and recorded and they need to know about the unwritten rules that the old hands usually observe.”

- Faye Palin,  
MSB Planning Commissioner



“Leadership is practiced not so much in words as in attitude and in actions.”

- Harold S. Geneen

from diverse elements of the community has earned the respect of his or her peers. This can only help in conducting the commission's business and enhancing its role in the community decision-making.

**Articulate.** As the spokesperson, the chair must be able to articulate the commission's position to the city council, the public, and the media. This includes the ability to explain complex or controversial matters, which may be either poorly understood or disputed in the community.



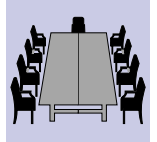
**Knowledgeable about the Issues.** Of all members, the chair must be able to understand the business before the commission. Failure to understand an item which the commission is to act on can lead to confusion and result in poor decision-making. The chair needs to put in extra effort studying the agenda and preparing for the meeting.

### Parliamentary Procedure

The ordinance establishing your commission may prescribe the parliamentary rules you are to follow and may give the commission authority to modify those rules. If none are prescribed by ordinance, then the commission must adopt formal rules of procedure such as Robert's Rules of Order or Mason's Rules. These rules are virtually the same, except that Mason's Rules is adapted more for legislative bodies than Robert's. Also, it is much more difficult to find copies of Mason's. Robert's and Mason's may seem complicated, but it is a good idea to learn the basics of whichever parliamentary procedures your commission uses. This will make you a better commission member and will contribute to the skills that characterize a good commission.

### Quorum

Title 29 (AS 29.40.020(a)) states that the commission is made up of five members unless the local governing body establishes a greater number by ordinance. Commissions in larger municipalities usually have seven to nine members.



A quorum is the minimum number of commission members needed to conduct business. A quorum is always a majority of the total membership. A quorum is also the minimum number of members needed to convene a meeting of the commission. Typically, it is also the minimum number of votes needed to adopt a motion.

When only a quorum is present, any one member can prevent matters before the commission from being adopted. This system can be unfair to applicants for permits that must be approved by the commission because the applicant must obtain the same number of approving votes whether a mere quorum is present or the full membership is in attendance. When a mere quorum is present, the applicant must obtain unanimous consent while a majority is all that is needed if the full membership is in attendance. Therefore, it is important to have planning commission members who are committed to attending meetings.

Some municipalities require only a majority of those present to take action on a matter, and some provide for alternate members who may participate when one or more regular members are absent or have a conflict of interest. It is not a good policy for a commission to act on controversial, complicated, or difficult issues when several members are absent, even though a quorum is present.

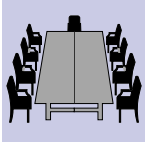
### *Motions*

All formal actions (voting) taken by the commission are initiated by motion. For example, a commissioner might say, "I move that the commission approve the rezone of Tract B from low density to medium density residential." Stating a motion places a matter before the commission for its consideration and permits debate to take place. Amendments to the main motion are always voted on before voting on the main motion itself. During discussion on the motion, members give their reasons for supporting or not supporting the motion as stated.

It can be important for commission members to give their reasons for voting 'yes' or 'no' on a motion. The reasons given for or against a given matter are needed to support the commission's position and form part of the findings that will be reviewed if a decision is appealed.

### *Formal Acts of the Commission*

Acts of the commission, such as granting a variance or conditional use permit or approving a plat, are considered to be formal acts of the commission. Most ordinances governing planning commissions require a resolution for formal acts of the commission. The resolution describes the action taken, its effective date, its expiration date, conditions on approval, and other information that fully describes the action taken. The resolution is usually the document that contains the findings of the commission and its rationale for the decision.



“A commissioner’s key responsibility is to make decisions based on the facts that are presented and the narrowness of the criteria for the decision at hand. A commissioner must remove from consideration those issues that are not germane to the case. It is very easy to get distracted by issues raised by the public that are emotional in nature and not applicable to the case’s merits.”

- Dwayne Adams,  
MOA Planning Commissioner

The important thing to remember is that a written record is needed to document the commission's formal acts and that findings must be made in quasi-judicial proceedings such as actions on plats, conditional use permits, and variances.

### *Testimony at Meetings*

Testimony at meetings may be the most familiar form of public participation in the planning commission's decisions. With adequate notice and an opportunity to review the agenda before a meeting, citizens can appear before the commission and present their viewpoint. Testimony at meetings is sometimes associated with crowded meeting halls, angry residents, and commissioners seeking ways to "dodge a bullet." Meetings may, in fact, bring out polarized opinion or cover items that are controversial in the community. The commission may also hear many good ideas that can assist it in making sensible, fair decisions.

### **Sources of Information for Decision-Making**

#### *Ad Hoc Citizen Committees*

Ad hoc committees are temporary committees appointed to investigate specific issues or problems and make recommendations to the city council and/or commission. Committees may also be formed to hear testimony and offer recommendations on major community undertakings such as a comprehensive

plan. Ad hoc committees should be composed of people with some interest or expertise in the issue under study. It is a good idea when ad hoc committees are formed to have at least one member of the commission appointed to the committee. This will keep open lines of communication between the two groups and keep the commission informed about the ad hoc committee's progress and problems. Ad hoc committees are disbanded when their work is completed.

#### **Organized Groups**

Service clubs, neighborhood associations, or civic groups may take an interest when particular issues that affect them are before the commission. These may be either permanent organizations, such as a local chamber of commerce, or more temporary groups that form because of a particular issue or concern. Typically, these groups will advocate for a specific interest or purpose. These groups are often good sources of factual and background information. They are often well-organized and prepared to provide thorough testimony.

#### **Public Opinion Surveys**

In addition to providing factual information on matters like demographics and household income, surveys can be useful indicators of community opinion on matters such as growth and economic development. They can help determine community-wide attitudes. Care should be exercised in preparing a survey to assure that the questions are clear and specific and do not

lead to pre-determined answers. This will assure that the information being solicited will be useful in making decisions about community goals.

No local planning program will succeed without public support. That support depends upon ongoing participation by citizens.

## Findings

### *What Are Findings?*

Findings are nothing more than a statement by the commission of the evidence and reasoning it used to arrive at a decision. They are the road map that shows the reasoning process that got the commission from the evidence presented during the public hearing to its final conclusion to grant or deny the applicant's request. Findings are important in helping the public understand why the commission reached the decision it did. Even if members of the public disagree with a commission decision, they may not become as upset or angry if they understand the reasoning that led to a decision.

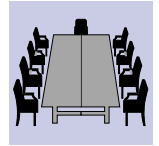
One of the most common reasons that courts overrule commission decisions is that the commission has failed to prepare findings. The lack of findings will result in a remand to the commission or, if justice requires, a de novo hearing by the court where the court orders a new hearing and assumes the role of the commission.

The court has made it clear that even if an ordinance does not require findings, they must nevertheless be made in quasi-judicial proceedings such as a variance proceeding. The court has also explained why findings are necessary, how they should be structured, and the benefit a commission will derive from going through the exercise of making findings.

Findings are the statements of the commission that show the reasons for its decision to grant or deny the entitlement or permit.

Findings set out the relevant facts found from the evidence presented; relate these facts to the conditions that must be proved or to the standards that must be met; state whether the relevant condition or standard is shown to have been met or not by the identified facts, and state whether all the necessary elements have been sufficiently shown. If there was no evidence given to prove one or more of the necessary elements, this lack of necessary evidence must be stated.

The findings would then go on to state whether the entitlement or permit is granted or denied. If special conditions or limitations are to be imposed on the permit, there should be findings that justify the additional limitations. If evidence is rejected because it is believed to be unreliable or unbelievable, then the commission should state that it did not rely on that evidence

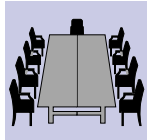


### Typical findings include:

- ✓ **description of request**
- ✓ **statement of facts**
- ✓ **reasons for approval or denial**
- ✓ **conditions of approval**

### Findings tell you:

- ✓ **who**
- ✓ **what**
- ✓ **when**
- ✓ **where**
- ✓ **why**



## The record should contain the following:

- ✓ The application
- ✓ Correspondence between the applicant and the staff
- ✓ The staff report and written comments submitted by neighbors and other members of the public
- ✓ Oral evidence given at the hearing
- ✓ Plats, plans, drawings, photographs, deeds, surveys, reports of consultants and experts
- ✓ Written testimony
- ✓ Records of mailed and published notice (if notice is an issue)
- ✓ Municipal records and other documents submitted during the proceeding

because it believed it to be unreliable or unbelievable, or that it found other evidence that was more reliable or believable.

If the proceeding was for the purpose of considering whether to revoke or deny a permit, findings must still be made even if the commission decides that the permit should not be revoked.

Although a resolution is typically used to describe the findings, there is no particular form required for the decision and findings.

### The Record

The record is the collection of all the evidence presented to the commission during the proceeding. This is the foundation upon which the commission's decision rests.

In an appeal of a commission's decision, the court is not going to step into the shoes of the commission and decide what decision the commission should have made if the commission made supportable findings that reasonably explain its decision. What the court will ask is whether there is substantial evidence in the record that supports the commission's findings. Substantial evidence is evidence a reasonable mind would accept as supporting the commission's conclusion. Even if the court believes that there is other evidence on the point that is stronger than the evidence relied upon by the commission, the court will defer to the commission's selection of the competing evidence so

long as a reasonable mind would accept such evidence.

The "reasonable mind" test gives broad, but not unlimited, latitude to the commission's selection from among competing evidence in the record. While the commission is not bound to determine which is the best and strongest evidence, it cannot invent evidence nor stretch evidence beyond recognition.

As stated by the Maryland Court of Appeals a long time ago, the commission has

... the duty of deciding in accordance with the evidence, and it is arbitrary and unlawful to make an essential finding without supporting evidence.

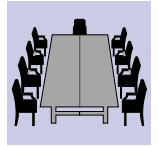
Heath et al. v. Mayor and City Council of Baltimore, 49 A.2d 799, 804 (Md. 1946)

## What Makes a Good Finding?

The best findings include the following five key elements:

1. An identification of the parties, property, and the requested. This will ensure that everyone has reached a decision on the same subject. It will "frame the issues."
2. A list of the witnesses, documents, and exhibits relied upon. Use only evidence that was introduced at the hearing. Personal knowledge may be used if that knowledge is commonly shared by others in the community. Knowledge that is not widely shared may be used so long as it is announced and the parties are given the opportunity to rebut it.
3. An identification of the standard established by the ordinance for the action requested by the applicant. The standard might be "undue hardship," "public safety," or "exceptional circumstances." By stating the standard, the commission acknowledges that it knows the standard, and it helps the commission focus on the standards that must be met.
4. An explanation, fact by fact, why the evidence does or does not establish that the standard has been met. Try not to leave out any facts. Even if the court disagrees with the commission's judgment, it is likely to uphold the decision if it feels that a hard look was taken at all the evidence.
5. If the request or relief is granted, a description of it and any conditions should be attached. This is invaluable for the parties and staff. Findings can be prepared after a decision is made and adopted at the next meeting. Almost any finding is better than no finding. If the commission does not announce the reasons for a decision, it will reflect poorly on the commission, and the decision could be jeopardized.

## How Do You Make Findings?

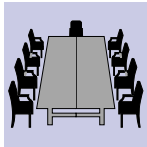


There are several methods of making findings. Three methods are commonly used in Alaska.

1. The commission to compose each of the findings through the commission's usual decision-making process. This can be an extremely time consuming method and often produces inadequately drafted, incomplete, ambiguous, or confusing language.
2. The commission discusses the evidence received and determines its decision along with a summary of findings that it believes support its decision. The matter is then referred back to staff with directions to draft detailed findings and a decision consistent with the commission's discussion and summary of findings. The staff draft is then returned to the commission for its final approval.

There are drawbacks to this method. It delays the final decision for two to five weeks, depending on how often the commission meets. This can be troublesome if the code requires the final decision be issued within a specified time from the close of the hearing. It also creates the risk that there will be difficulty getting commission approval of the draft final findings if all members who were present at the hearing are not present at the subsequent meeting when the draft is presented for approval. If members who were absent from the hearing are present at the subsequent meeting, a serious question arises as to whether such members who did not hear the evidence can vote to approve the draft final decision.

The great advantage to this method is that it provides the best opportunity for the commission to approve well-written findings. It also gives staff a chance to consult with the municipal attorney if there appear to be problems with the commission summary of findings and decision.



“One of the most important things that you do is make “findings of fact”. It is important to clearly elucidate the reasons for your decision. The facts should be clearly tied to city codes, comprehensive plans, and standards by which the merits of the case should be judged. Subjective statements can only be loved by attorneys.”

- Dwayne Adams,  
MOA Planning Commissioner

An alternative to commission approval of the staff draft is to delegate to the member who presided at the hearing the authority to review and approve the staff draft.

3. For staff to include proposed findings and decision with its report on the application. This method has drawbacks, too. The staff recommended findings would be based solely on what staff has learned from its review and investigation of the application; it will contain no consideration of evidence that is presented at the hearing. Further, if the commission disagrees with the staff recommendation, then the commission is

left to attempt to compose its own findings with the likely result being incomplete, confusing, or ambiguous findings and decision. To avoid the risk of having staff recommended findings and decision that differ from what the commission wants, some planning staffs will provide two sets of proposed findings and decision: one supporting approval of the application and one supporting denial. This may set the stage for a successful appeal by a disappointed applicant or other party to the proceeding as it suggests that there is some arbitrariness in the decision finally made by the commission.

## Rules of Appeal

A party who is disappointed in a quasi-judicial decision of a commission may appeal that decision to the Superior Court within 30 days of the issuance of the final decision if the land use regulations do not provide for an appeal to some other municipal body. However, Rule 602(a)(2) of the Rules of Appellate Procedure provides that the 30 days does not begin until the commission issues a decision that "clearly states that it is a final decision and that the claimant has thirty days to appeal." If words to this effect are not included in the decision, a disappointed party may be able to file an appeal to the Superior Court long after

everyone thought the thirty days had expired.

Even if the land use regulations provide for an appeal to another municipal body (e.g., the city council, assembly or a special appeals board), it is a wise practice to include a statement in the decision that sets out the name of the municipal body to which the appeal may be taken, the municipal office where the appeal must be filed and the number of days a person has to file an appeal.

