

"Controlling Meetings"

Plan-link posting, November 2004

As promised, this is as close as I can get to a summary of information sent to me on controlling the length of presentations to Zoning Boards. Most responders said that it's up to the Chair to control the length of presentations. There are still many factors to be considered and Peter Loughlin has hit many of these in a note sent to me. Rather than summarize his fairly succinct comments, I've included parts of his e-mail for everyone's enjoyment. As Peter concludes, there is no magic formula or bullet to make this easier, while being fair to all parties concerned. Simplistic solutions like a ten-minute presentation limit are easy to enact and administer, however, zoning does have many complex issues that need to be fully aired, by both sides of the issue.

Peter, thank you for your thoughts on this matter.

Charlie Le Blanc
Chair, Portsmouth Planning Board

VOLUME: Given the role of the ZBA - to grant relief when the ordinance applies unfairly to a particular piece of property - the ZBA in Portsmouth and the other cities have many, many more applications than most towns as they try to deal with the impact of ordinances on hundreds of lots that were created before many of the stricter requirements of the last 10 or 15 years were established. This is so even though the Planning Boards in these towns may be very busy with new subdivision applications. As a result of the volume, the need to keep meetings moving is critical so that the board is not totally overwhelmed and the volunteer members find they have a second full time job.

TIME LIMITS: The idea of a time limit on speakers is a good one, however, the chair has to be given a good deal of flexibility in administering rules. On a complex petition with a good deal of history - like the Toyota case the other night - it can be difficult for the applicant to go over the history and cover the requirements for a variance(s) in 10 minutes. Just going over an allegation about the Fisher v. Dover doctrine or the self-created hardship issue can take more than 10 minutes. The Portsmouth Board is very good at recognizing that the request for a variance is not a popularity contest, however, in a controversial application, like Toyota, there is often going to be only one person speaking in favor and many neighbors speaking against. A rule that would allow the applicant to speak for 10 minutes but allow a half dozen opponents to speak for 10 minutes each can really skew the public hearing process. This is especially true on rebuttal when the applicant may need to respond to a large number of allegations that may or may not be accurate.

WRITTEN MATERIALS: The suggestion that one PLAN LINK member made of requiring written materials has some merit, however, that too has limitations. I think Portsmouth's rule that all written materials must be submitted with the applications discourages the submission of written materials. The applicant should be required to submit a complete application, but the requirement that all written materials be submitted with the application is difficult. First of all it puts a lot of time pressure on applicants who are always trying to scramble to meet the monthly deadline and often come up with the ideas for the materials as they are wrapping up the applications. For the most part the materials sit in the Planning Department for 2 weeks before they are submitted to the Board, but this gives

opponents almost 3 weeks to examine and critique the material. It is not that the applicant is trying to hide anything, (maybe I should speak only for myself on this issue), but the problem is that the abutters then can submit response material at the meeting and make statements with no real opportunity for the applicant to respond. I like Rye's process where they require the complete application to be submitted 3 weeks before the meeting (so the staff can review it and prepare the legal advertisement) but allow supplemental materials to be submitted 6 days before the hearing in time to go out with the board's agenda packet and in time to give the abutters a reasonable opportunity to review them.

SUGGESTION: Perhaps it might make sense for the Chair to announce at the beginning of the meeting, or as necessary before each application, [or for applicants to be given written instructions when filing] that the board expects the initial presentation to last no more than 10 minutes but inform the speaker that after 10 minutes, the chair will grant additional time if, in the discretion of the chair, that is necessary and appropriate. Perhaps the lead opponent could be given a similar time limit and other speakers on both sides be asked to limit their remarks to new material and to stay under 5 minutes. As I indicated at the beginning of this letter, this issue has vexed me for some time as I advise boards that I represent. As you can see, I do not have a silver bullet to take care of the issue. The observations and suggestions that are contained in this letter may be worth exactly what you are paying for them.

Peter Loughlin, Esq.