



## Public Hearings – Understanding the Rules for Participating

### What is a public hearing?

A public hearing is a formal proceeding held in order to receive testimony from all interested parties – including the general public – on a proposed issue or action. Those interested in providing testimony will be sworn in – usually by a court stenographer – and be allowed to present oral comments. No responses will be provided to oral comments/testimony. This is a one-way conversation, so members of the public interested in participating should know that those in charge of the hearing are not permitted to respond to any comments, questions or concerns expressed.

The person overseeing these official proceedings is an appointed Hearing Officer who can be the Solicitor or any other person designated by the elected body.

Like in the case of a public meeting, a public notice is also required for all public hearing. And, all deliberations – expect for those the Board/Commission/Council holds with its Solicitor in Executive Session – must take place in an open format.

- **Public Notice:** Typically provided via several means including a legal notice in a newspaper of general circulation in the affected area; posting of a notice in a public place and/or in specific instances, a written notice to individual parties.
  - **Public Notice for a public hearing will also include specific information on the proposed project and indicate when and where all applicable documents pertaining to the public hearing may be viewed by the public. There should be no delay in the public gaining access to these documents** – they are required to be easily accessible to the public and on display at the Municipal Building or local Public Library. The Public Notice should include all such instructions.
- **Executive Sessions:** these are private meetings between elected Board members and their Solicitor (i.e., lawyer) and/or other professional advisors. These sessions are held to discuss employment matters, real estate matters, and other confidential matters that may require legal recommendations.
  - When a board moves to an Executive Session they must publicly announce the reason for the session.

### Why attend and why provide testimony?

Providing oral or written testimony as part of a public hearing is an important opportunity for your voice to be heard before a decision is made. Whether you choose to provide oral testimony, written testimony, or just listen as a member of the audience, attending a public hearing can also provide important information on the issue/application that is the subject of the hearing. Listening to others comments/concerns can provide clarity on the issue being considered.

**Hearings are important venues but there are very strict ground rules.** In order to effectively engage during these proceedings, it is important the public understand how public hearings are conducted.

The ground rules for all public hearings in PA can be found here: **PA MPC, ARTICLE IX Zoning Hearing Board and other Administrative Proceedings, Section 908, Hearings:**

<http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1968&sessInd=0&smthLwInd=0&act=247&chpt=9>

Even though the MPC references to public hearings fall within the Zoning Hearing Board section of the code, it is important to note that **these rules apply to all quasi-judicial proceedings, including local public hearings.**

The following are all based on the rules outlined in PA MPC, ARTICLE IX Zoning Hearing Board and other Administrative Proceedings, Section 908, Hearings:

<http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1968&sessInd=0&smthLwInd=0&act=247&chpt=9>

In order to engage effectively, it is important to know the following:

- Testimony can be provided orally, or in writing – it’s best to provide both. Be sure to include your name, address, phone number, and email address.
- No responses to your comments, questions, or concerns will be provided during the hearing – hearings are a one-way conversation.
- A court stenographer will be present and will officially swear in all those providing testimony.
- It is important to speak slowly and clearly so the stenographer can record your comments; providing a written copy of your remarks is recommended.
- **Time allotted for each individual to provide testimony may be limited – usually three to five minutes is standard.**
  - **It is important to know that one minute = 150 words.**
  - It is best to prepare your comments, in writing, and bring at least two copies of your comments with you. As you prepare your comments be sure to be mindful of your word count so your comments fall within the prescribed time limit.
  - Written comments can be longer than the allowable time limit, but oral testimony must comply with any time limits.
- Citizens can be represented by an attorney, however, it is not required. Hiring an attorney is optional. Citizens can always provide testimony without such representation.
- Formal rules of evidence (like those in a courtroom) do not apply to public hearings. However, having an attorney representing citizens’ concerns can add a level of assurance that the public will be included without being intimidated.
- The hearing officer as well as all other officials participating in public hearing proceedings are not permitted to have sidebar or what is known as “ex parte” conversations or communications with any parties (citizens, applicants, advocates) once the official proceedings have begun. Any additional communications outside of the actual hearings must include all interested parties relevant to the issue(s) being considered as part of the public hearing(s).
  - “The board or the hearing officer shall not communicate, directly or indirectly, with any party or his representatives in connection with any issue involved except upon notice and opportunity for all parties to participate, shall not take notice of any communication, reports, staff memoranda, or other materials, except advice from their solicitor, unless the parties are afforded an opportunity to contest the material so noticed and shall not inspect the site or its surroundings after the commencement of

hearings with any party or his representative unless all parties are given an opportunity to be present.”

- A hearing may be “continued” – meaning the official proceedings have not fully concluded on the first date of the hearing and the record will remain open for the next scheduled date and time for the continuing proceedings. The “continued” hearing date will be established and all parties notified. The date and time of the next hearing may be discussed and agreed to as part of the first night of the hearing proceedings. If not, citizens should ask for clarification and assurances they will be notified of the next hearing date and time.
- After all the public hearings have concluded on the matter, a final decision must be made within 45 days following the conclusion of the last public hearing. A vote on the final decision must be made in public and all documents regarding the decision are available for public review through an official Right to Know (RTK) request.
  - As part of their RTK request, citizens could request the opportunity to review, scan and/or photograph or photocopy all documents included in the official record of the public hearing.
  - All submittals by the applicant should be included as part of the official record and should be easily accessible by staff and the requesters (i.e. citizens submitting a RTK request).
- If the Board/Commission/Council does not render a decision within the required 45 days following the last hearing, the application on the proposed project receives an automatic approval.
- All decisions by the elected body can be challenged or appealed via a legal proceeding, but must be made within 30 days of the final decision.
- Copies of the decision will be provided to the applicant and all members of the public “who have filed their name and address with the board not later than the last day of the hearing, the board shall provide by mail or otherwise, brief notice of the decision or findings and a statement of the place at which the full decision or findings may be examined.”

**The full text of the rules specific to final decisions can be found here:** “The board or the hearing officer, as the case may be, shall render a written decision or, when no decision is called for, make written findings on the application within 45 days after the last hearing before the board or hearing officer. Where the application is contested or denied, each decision shall be accompanied by findings of fact and conclusions based thereon together with the reasons therefor. Conclusions based on any provisions of this act or of any ordinance, rule or regulation shall contain a reference to the provision relied on and the reasons why the conclusion is deemed appropriate in the light of the facts found. If the hearing is conducted by a hearing officer and there has been no stipulation that his decision or findings are final, the board shall make his report and recommendations available to the parties within 45 days and the parties shall be entitled to make written presentations thereon to the board prior to final decision or entry of findings, and the board's decision shall be entered no later than 30 days after the report of the hearing officer. Except for challenges filed under section 916.1 where the board fails to render the decision within the period required by this subsection or fails to commence, conduct or complete the required hearing as provided in subsection (1.2), the decision shall be deemed to have been rendered in favor of the applicant unless the applicant has agreed in writing or on the record to an extension of time. When a decision has been rendered in favor of the applicant because of the failure of the board to meet or render a decision as hereinabove provided, the board shall give public notice of said decision within ten days from the last day it could have met to render a decision in the same

manner as provided in subsection (1) of this section. If the board shall fail to provide such notice, the applicant may do so. Nothing in this subsection shall prejudice the right of any party opposing the application to appeal the decision to a court of competent jurisdiction. ((9) amended Jan. 11, 2002, P.L. 13, No.2 and May 9, 2002, P.L.305, No.43) **PA MPC, ARTICLE IX Zoning Hearing Board and other**

**Administrative Proceedings, Section 908, Hearings:**

<http://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1968&sessInd=0&smthLwInd=0&act=247&chpt=9>

What to listen for at the hearing:

At the start of the hearing, an appointed hearing officer will read several required statements into the official record including:

- A description of the matter before the Board/Commission/Council
- The date and location of all Public Notices
- And any other applicable explanation of the hearing process

In addition to the official instructions provided at the start of the hearing, the applicant will be given time to make his/her case. During this part of the proceedings, citizens should listen carefully to all of the documents the applicant and/or their attorney(s) are asking to be admitted into the official record or transcript of the public hearing. Citizens should take careful notes of all documents submitted along with their assigned Exhibit number or letter. This will make any follow up Right to Know (RTK) requests easier. Make careful note of the following:

- Specific application materials and dates referenced
- Maps, drawings and/or schematics provided
- Any expert reports, letters or testimony provided
- Notations or references to all letters, emails, meeting notes that have been submitted to the Township/Borough – again, having detailed information on each of these will be helpful in any follow up RTK requests
- Any other materials submitted for consideration as part of the hearing proceedings

How you can participate in the hearing:

- **Always be courteous and respectful**
  - **When you present comments before any elected body it is always best to prepare your comments, in advance, and read from that statement.** Most governmental bodies allow a limited time for public comments (typically between two and five minutes) so having your statement written will help you make your strongest points within the limited time period. After making your oral comments, submit your statement to the Board/Commission/Council so that it can be included in the public records
- If you are asking the Board/Commission/Council to take a specific action, it is best to also submit this request, in writing, after making the request, publicly

**After the hearing** – If you would like additional information on any of the materials submitted on the official hearing record you can submit a Right-to-Know (RTK) request. The PA Right to Know law outlines what is considered a public document and how to file a request:

<http://www.openrecords.pa.gov/>

Video/audio recordings of public meetings:

“The Sunshine Act allows public hearings to be recorded with an audio recorder or a video recorder. It also allows agencies to issue rules concerning the use of recording devices in order to avoid any disruptions. However, such rules should not be an attempt to prevent a member of the public from recording a meeting.” <http://www.openrecords.pa.gov/SunshineAct.cfm>

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