



SPECIAL MEETING MINUTES

Board and Commission Member Training

Monday, May 17, 2021

OPENING REMARKS

Ms. Martin, AICP, Senior Planner began the meeting at 6:30 p.m. This training is for the members of the Architectural Review Board; the Board of Zoning Appeals; and the Planning and Zoning Commission.

MEETING ATTENDANCE

Members present:

ARB: Gary Alexander (Chair); Amy Kramb; Sean Cotter; and Frank Kownacki; PZC: Warren Fishman; and Kim Way; BZA: Jason Deshler; Joseph Nigh; and Robin Clower

Members absent:

PZC: Jane Fox; Rebecca Call (Chair), Mark Supelak; Leo Grimes; and Lance Schneier; ARB: Martha Cooper BZA: Sarah Herbert (Chair); and Alicia Miller

Staff and consultant members present:

Nichole Martin, AICP, Senior Planner; Tammy Noble, Senior Planner; Jesse Shamp, Frost Brown Todd Attorneys; and the consultant, Greg Dale, McBride Dale Clarion

TRAINING

The Board and Commission members present and staff introduced themselves and Ms. Martin introduced Mr. Shamp, Frost Brown Todd Attorneys and Greg Dale, McBride Dale Clarion who the consultant is providing the training. Mr. Dale reported that prior to this meeting, he held a meeting with the B&C Chairs and Vice Chairs, to provide a review and discussion of their roles, in particular.

Mr. Dale provided an introduction of the training on the topics to be reviewed and discussed this evening.

Accept that your job is hard.

Staff measures, reviews Use tables, and applies the Codes. The Board and Commission review of the information provided requires judgement and discretion. Applicants should leave the meeting feeling they were treated with respect, even if they did not receive the result they had hoped.

Be prepared.

Board and Commission members are acting in a legally-subscribed, government role, representing the City of Dublin. Know the Code, all the Plans defined for the City and your community. Review your packets before the meeting and view the sites from the public right-of-way and independent of each other. Do not engage in conversation if someone approaches you on site, other than identifying your role for being there.

Be respectful.

Provide good body language by sitting up straight and looking attentive all through the meeting whether virtual or in Council Chambers. Make eye contact and use active listening in a professional manner.

These hearings are important to each applicant, no matter how late in the evening they are being heard. Applicants have the right to feel the focus is on them. Manage emotions of the crowd, remain calm, and listen for facts to determine if the City's standards are being met. Facts and standards are most important; keep emotions out of the process. The number of people in attendance, the number of names on petitions, or a contentious case should have no bearing on the outcome.



Be Professional.

Do not mingle with the crowd or use first names before and during the meeting. Professional decorum is required in this legally-established, government function but the meeting can be handled in a friendly way.

Focus on facts and standards.

Find the facts and apply them to standards. Speakers are applicants or opponents; you have every right to expect they will give some version of the facts. If they only provide an opinion, you can ask them to explain themselves. Encourage facts from speakers because opinion is not important. Be aware of what standards apply and help the speakers make their point fit because you know the Zoning Code. You represent the community, not your personal views.

Run fair and efficient meetings.

Make sure you have clear procedures and explain the process and the order of the meeting at the beginning of the meeting. Make it clear, if there will be time limits for them to speak; manage the time and focus the speakers on fact.

Have an unbiased and open mind.

Your decorum is similar to what is expected of a jury in a court trial having open minds and unbiased opinions. Disclose and deal with conflicts and biases you may have. You should bring your background, knowledge, and experience to the table with an open mind, and allow yourself to change your mind during the meeting. Let the applicants and opponents convince you with facts.

Conflicts of Interest.

The applicant has a right to an unbiased decision-maker. If you feel you have a true, legal Conflict of Interest, as defined as a monetary stake in the outcome of the decisions, you should consider recusing yourself. Speak to Staff, prior to the meeting date, to determine if you have a Conflict of Interest. The more difficult issue to determine is the perception of the conflict of interest or the perception of bias. An attorney might state it is not illegal to do, but it may not be the right thing to do, based on public perception. If there is any doubt in your mind, disclose it to the Board, on the record. Determine what you think the true answer is. Ask yourself three questions: 1) Is it a legal Conflict of Interest? 2) Would the 'average, reasonable person' perceive it to be a conflict? 3) In your heart of hearts, can you make a fair and impartial decision?

Mr. Clower asked when would be the first time you would disclose a Conflict of Interest, if you think you are on that line. During the meeting or to Staff before the meeting?

Mr. Dale suggested keeping the line of communication open with Staff. When you get to the meeting and before anything starts, you declare that. "I would like for the Board to know (the connection with the applicant) and so I am asking permission to continue to participate." The decision is ultimately up to you. If you say you want to participate even when the Board Members have said you shouldn't, then that makes the case that there is a Conflict of Interest, especially if you want to do it as badly as it will come across like you have a vested interest. If you choose not to be involved, before the case is heard, recuse yourself. Leave the room and sit in the lobby or one of Staff's offices. Do not listen to the case being reviewed and do not sit in the audience. You have to be careful when asking the attorney what to do.

Ms. Call said she researched this upon coming to Ohio and learned Ohio is one of the strictest states on Conflicts of Interest. She recommended proceeding very cautiously. Additionally, Mr. Dale said there is a state Ethics Commission outside of Dublin's Zoning Code and Charter who may be enlisted to weigh in. That is why members might want to seek legal advice. Do not make a decision all on your own; seek advice.

Conduct the business of the public in public.

Avoid Ex Parte. There are public records, public meeting requirements, and Sunshine Laws that apply to ensure we are making public decisions in public. Do not contact/communicate outside the hearing or meeting

process such as receiving a phone call from a neighbor, an email from the applicant, running into someone at the store, or the applicant wanting to take you to visit other sites with similar developments.

Understand what constitutes a public record. For BZA, legal may say not only is it a bad idea, you may be endangering the process by acting in a quasi-judicial capacity. Boards of Zoning Appeals are particularly driven by procedure rules that are closer to court settings than the Planning and Zoning Commission typically does when advising City Council. BZA decisions are appealable directly to Common Pleas Court, which has a different set of rules. Ex Parte contact may in fact create legal jeopardy for you as the BZA acts in a legal advisory capacity. When the PZC is in the advisory capacity, this may not be illegal but still a bad idea.

Use 'reasonable person standards' when considering there may be the perception of Ex Parte contact. Any private meetings with the applicant, being on the same team/golf league, volunteering together, etc. the perception is something could have been discussed about the case and could seem questionable. When an applicant realizes you have been conducting private meetings, a community meeting, or talking to neighbors, etc., they may not feel that a fair decision will be made for them. Do your homework and get as much information as you can. If approached by someone, encourage them to contact Staff and/or attend the meeting and concerns can be addressed. All the members should agree on this. Instead, you will read the Planning Report, review the Zoning Code, and listen to testimony in order to make a decision. City Council, on the other hand, can be approachable outside the process.

Separate fact finding from deliberating.

Have a clear point when you shift from listening and questioning to building consensus on a decision. Listen for facts that connect to standards; ask clarifying questions to draw out more facts.

Leave a trail by building findings to support decisions.

Ask if there are any more comments. If none, the audience is done at that point; they have had their say. Close that portion of the meeting and move into deliberation. Build your findings with the ability to weigh, assess, sift, and apply facts to standards as not all of the information was important. Do not get involved with "if you do this, you can do that"...this can take the process off the rails. Make sure you heard everything you needed to hear or continue to ask questions. Then it is the Board's time to discuss and deliberate. There may come a time when you want Mr. X to come back to the podium for clarifications; that is certainly acceptable if you misunderstood something or there's more information you want brought forth. Have a good line between fact finding and deliberating. When you are deliberating you are trying to build a Board, majority consensus. When you feel you have reached a consensus, leave a trail by building findings to support the decisions. Then a member can say, "I think I know where the Board is on this proposal, let me make a motion..." which should represent the consensus of the Board with reasons, facts, and standards.

The nature of minutes.

Ensure they achieve your goal; you ought to be able to point to the decision or finding for a motion with a good depiction of the reason for your decision.

Mr. Clower said he is new to the BZA and has noticed a member saying "I'm in favor of this and here are the reasons", which may lead to more questions.

Mr. Dale responded that members should not be expressing opinions. Until all the facts are in, members should not have made up their minds. Enter the meeting with the mindset you can change your mind. When members are deliberating, there is nothing wrong with taking turns stating "I am in favor of this and this is why." Then another member could reply by saying "Well, did you hear what Ms. Y said about such and such?" Roundtable is a controlled way the Chair can recognize all the members and ensure everything being said is audible. When you are asked "Why is that your opinion?" Your answer should not be because you like or dislike something. If you need to approve something because it fits the standards but you do not like the proposal, then revisit the standards; they may not reflect the community's interests, either and perhaps

it would be time to revise those. City Council has adopted the various Plans, Guidelines and the Codes and you have agreed to make your decisions based on those; it is your job to apply them. Staff are the professionals and write their report on the application and their read of it. But once this opens up and you hear all the viewpoints, it is possible someone makes a point that you had not considered.

A straightforward and non-contentious case application can be approved based on the findings in the Staff Report. If you find Staff said this but you are hearing that, as a member you have to work a little harder to find the facts. Staff are professionals and do not take it personally when you disagree but if every time you are against staff's findings, they might become concerned.

Stay within the Code.

You want to have the best quality development you can have, but you also need to stay within the Code. To request a condition to be added to the approval to make the development compliant with standards is one thing but requesting a condition just because you think it would make for a better development is another. Follow the Ordinance criteria and do not demand things that are not justified by pointing back to the Code.

Understand the principles of due process.

Key elements of due process: notices; the opportunity to be heard; full disclosure and access to all information the Board or Commission are using to reach a decision; and unbiased decisions.

Mr. Dale suggested applying good concepts of fairness; they are common sense notions. Notices are minimal legal requirements but it is a good practice to go above and beyond to be as friendly to the community as possible and seems that to be true in most communities.

Ms. Martin stated notices for the City of Dublin are sent to adjacent addresses 150 feet or 300 feet from the development site, depending on the type of application. If 150 feet does not seem adequate; a full 300-foot distance for notices can be sent or a 150-foot distance for notices plus notices for all adjacent HOAs, who would then distribute that information to their networks. The Planning Department partners with the Communication and Public Information Department that publishes information on the City's website to provide full transparency 24/7 for all applications that have been submitted. Development signs are posted on every property that is scheduled for a hearing. When folks complain about not receiving notice for a particular case, inform them the City not only meets the minimum legal requirements, they are exceeded. People seem to be even more cynical in today's environment.

Discussing City business on the City account or your own private account is considered a public record. Public records include texts and emails sent between members perhaps after a meeting or talking to someone about that public meeting. As a Board Member, be careful about using social media as a platform for discussing City business as it can be considered a public record. Before you hit send, ask yourself "Do I want to read about this in the public newspaper the next day or answer a question under a deposition?" *Your legal department may tell you otherwise.*

Ms. Noble stated all the B&C members and City Council are provided with Dublin accounts for the reason to communicate via those addresses so private accounts are not disrupted due to a request for public records. Mr. Dale stipulated that even though members are provided with channels of communication members are not excluded from having private accounts investigated. You might not produce it for further dissemination but the person you sent it to might end up producing it or the person he forwarded the information to might divulge it.

Mr. Dale addressed the Chairs - he asked for information covered in their meeting earlier that evening that might be helpful for this group.

Ms. Call responded, when coming to the end of the deliberation period we tie everything up as clear feedback for the applicant. We ask if there was anything that needs clarification or changed before the application

comes back for further review. This also enables the applicant to go to the very end of the minutes for their case and review what was discussed.

Mr. Dale indicated Dublin's minutes are like transcript minutes, which is good on one hand but sometimes, the important information does not shine through. Talk to whomever does the minutes to improve that summing up part at the end. For key points to be clear, provide 1, 2, 3, 4, 5, of summary statements etc. You approve the minutes; you have the opportunity to address and work through the type of information you expect for the minutes.

Mr. Fishman indicated the PZC got in the habit of getting the applicants to meet Code but then to exceed the Code. The PZC did not want a development that barely met the Code, as that seemed inadequate. Very few applicants were coming in meeting the Code exactly and would request a Waiver or Variance of some sort. At that point, it is an avenue for flexibility, leaning towards exceeding Code. Members do not vocalize "We are not going to approve the project unless you exceed Code" but it is a way to encourage the applicant to give and take to some degree. He asked if it was wrong to encourage developers to exceed Code. Before Mr. Dale answered Mr. Fishman's question, Ms. Martin asked to cover the process for the benefit of those that have not been serving on a Board or Commission long.

Ms. Martin stated the PZC does a lot of work with Planned Unit Developments (PUD), an exercise of establishing a unique Zoning Code or a set of development standards for a geographical area, whether for a neighborhood or shopping center. This gives members the opportunity to ask for elements that are not specifically stipulated in the City of Dublin Ordinances but may be appropriate due to the type of requests being made by the applicant. Adversely, the PZC does a lot of work with the Bridge Street District (BSD), which has a more defined set of development standards.

Mr. Dale indicated members may reach a point where they hit the "red line", and decide to exceed that. He urged the members to ask themselves, "What is our motivation for asking for that little bit more?" Is it because we want it because it will look a little bit better, or we like that architectural style better, etc. tying it back to a City policy to keep from going outside the Code. There is a lot of gray area that is negotiable, debatable, and are slack in that equation. You will find it is simple in concept, tough in practice. Make a good faith effort for something that is in the Code and achievable. Your job is to make sure the proposal meets Code and requesting to exceed Code based on opinion is not acceptable.

Mr. Fishman noted there are also elements that are unwritten.

Mr. Dale pointed out in the example of the 100-foot-setback stipulation for Brand Road, while not being written down, has become practice to achieve that objective. He stated there might be something written in the Code that talks about compatibility of street fronting, or about the importance of preserving the integrity of that corridor that can be the basis for the request and determination.

Ms. Call noted when an application comes in and it presents either as ambiguous or not covered in the Code or both and it goes unspoken that does all of us a disservice. The item could be discussed and resolved that evening, (or require further discussion) which could prompt a possible Code Amendment in a reasonable period of time. Had it been revised in the Code earlier, the item would not have to be discussed, repeatedly. Mr. Dale recommended not acting every time a case seems to suggest a change in the Code because Staff tracks that information and there are times they will process a 'package of Code Amendments' that relate to a number of different items that have surfaced, which is more efficient. He recommended members should all be thinking about making time within the context of the meeting, outside of hearing development projects, to talk about such items. Agenda items can include a discussion of landscaping standards and the like that you have seen. The PZC is not only a zoning commission, but more notably, the Planning and Zoning Commission, which entails a leadership obligation. This indicates other items besides zoning applications are addressed.

Mr. Fishman reiterated compatibility is a good argument for exceeding Code to obtain the highest standards for all of Dublin, not one development.

Ms. Martin emphasized a lot of elements are about planning and are identified in the Community Plan that allows flexibility, which is not as black and white as the Zoning Code can be. These subjects are even more applicable when establishing a PUD; all elements need to tie back to the criteria. Many of our criteria for all of our Boards and Commission, with the exception of the BZA, site the City of Dublin Community Plan as well as other policy documents adopted by City Council. If an element of the Community Plan is applicable to a certain site and is not met, that is the criteria to refer to and rely on to have foundation and understanding for that conversation to achieve the desired outcome.

Mr. Fishman agreed the Community Plan is not like the Zoning Code; it is fluid and provides flexibility.

Mr. Dale ended his presentation by agreeing to those statements.

Ms. Martin thanked Mr. Dale for his time that evening and adjourned the meeting at 7:50 p.m.