

Greg Dale of McBride, Dale, Clarion, 5721 Dragon Mr. Way, Ste. 300, Cincinnati, OH 45227 facilitated the Board and Commission Member training, which focused on public meeting best practices, meeting procedures, application review, and Board and Commission deliberation. The members were divided into four groups along with Planners to assist in the discussions. Everyone in the room was asked to introduce themselves as there were several new members.

Attendees

Asst. Law Director: Thaddeus Boggs
PZC: Mr. Schneier, Ms. Call, Mr. Supelak, Mr. Mr. Way, Mr. Chinnock (new), Ms. Harter (new), and Mr. Fishman arrived late.
ARB: Mr. Alexander, Mr. Cotter, Ms. Cooper, Mr. Jewell, and Ms. Damaser (new) arrived late.
BZA: Mr. Deschler and Mr. Murphy (new)
Staff: Jennifer Rauch, AICP, Planning Director; Tammy Noble, Senior Planner; Nichole Martin, AICP, Senior Planner; Sarah Holt, AICP, ASLA, Senior Planner; Christopher Will, AICP, Planner II; Zachary Hounshell, Planner I; and Taylor Mullinax, Planner I.
Absentees: Mr. Nigh, Mr. Clower, and Ms. Miller

Mr. Dale said he was consultant who has worked with the City for many years for training and has served on the Historic Board in Cincinnati, OH. Small groups were formed to allow for more conversation. The groups were tasked with answering four questions to later share their ideas/solutions with the group, as a whole.

Mr. Dale stated that being a board or commission member is difficult. You are asked to understand a zoning code, comprehensive plans, prepare for meetings and render difficult decisions. He suggested that being a valuable board or commission member requires preparation before the meeting including conducting site visits. An application could comply with everything applicable in the Zoning Code, but typically applications come before boards and commission because they involve discretionary discussions and decisions. He stated that this is further complicated with applicants who may not be familiar with the process. He stated that it is vital that staff, as well as board and commission members assist applicants in navigating the process. Mr. Dale mentioned that the prior meeting was help with the chairs and vice-chairs of each board and commission and they discussed these challenges and opportunities.

Mr. Dale stated that as representatives of the City of Dublin, board and commission members need to be respectful of the applicants including using encouraging body language, eye contact, and active listening skills. He stated that this could be challenging in some cases but is important to ensure a fair process. He stated that members focus on the finding the facts, apply the facts to the required criteria, and render a decision based on this analysis. He stated that members may have to instruct the applicants of what they need to demonstrate in order for members to make a decision. Mr. Dale stated that for the Board of Zoning Appeals, participants are providing testimony to the Board based on their quasi-judicial authority. He stated that members should only consider facts of a case and avoid opinions or feelings. He stated that this may require a chair to ask the speaker why they believe something is true and not rely on personal opinions. He reminded the members that they must be unbiased and open minded. He reminded the members to thoroughly review the staff report, carefully review the materials, and conduct site visits. However, he said after all that analysis is conducted, it is important that members come to the meeting with the mindset that



your opinion could be changed after hearing more of the facts. He said this will allow applicants to have a fair process and decisions that are made based on all the material presented, including applicant testimony. Mr. Dale reminded the members not have contact with anyone outside of a meeting and if they have questions, direct their inquiries to staff. Lastly, he stated that it is imperative the members only have the authority to request design considerations that are provided in the Code. He stated that if meeting the Code does not produce the quality of development that you demand for the City, then the Code should be modified. Mr. Dale concluded his introductory comments and then presented instructions for the group discussions. He highlighted that each group should consist of members of the three boards and commission, including the Planning and Zoning Commission, the Architectural Review Board and the Board of Zoning Appeals. He said this will allow the members to share their individual experiences with other board and commission members.

The small groups were asked to discuss the following four questions:

1. How do the Boards and the Commission handle a situation when an applicant introduces impacts of project costs as part of their proposal?

Ms. Holt reported from her group that economics is a huge factor, especially in the BZA cases. Applicants request to do the same that others have done down the street. The Code and cost should not intersect and are two different variables. The City of Dublin requests the highest quality, which is subjective and can raise a project's value and economics. She said the members discussed how a project will likely affect the entire community and the results of the project should be positive. She stated that they discussed the importance of spending resources in the appropriate areas. She stated that they also need to be mindful of unintended consequences. She went on to say that if a project is priced higher than what the market calls for, the community will end up with an empty building. She concluded that Code requirements may be affordable or not affordable, dependent upon the applicant.

Ms. Call commented that the Planning and Zoning Commission can be tougher in its requests. If the applicant cannot afford to comply with the Code in a certain district, then perhaps their development is more appropriate in another location.

Mr. Hounshell stated that his group discussed the importance of modifying the Zoning Code when needed and if the standards increase quality of design, this will impact cost. He stated that businesses have a bottom line to meet and that we have to understand those limitations. He also shared that staff will provide applicants with other projects that are comparable to their request or proposal to illustrate the intended result. He said that it is possible for developers may need to relocate to other parts of the City dependent upon their needs and commitments.

Mr. Dale stated that the City of Dublin requires high quality. He said that a project could meet the Code but Dublin will still desire more. To clarify, if the applicant demonstrates to the Planning and Zoning Commission they cannot afford to comply with the Code, the members could conclude that it is not part of their consideration. He stated that there are variances or waivers when an applicant cannot afford brick but brick is required. There are processes for that type of review and members should rely on those processes.

Ms. Call stated that if the Planning and Zoning Commission is requiring too high of standards, then cost could be taken into consideration.

Mr. Alexander stated that there are differences between residential and commercial projects, both in potential impacts to the City and to the level of sophistication of consultants. He stated that often times the Architectural Review Board and the Board of Zoning Appeals are hearing from residents that may not be as familiar with the development process as professional consultants that address the Planning and

Zoning Commission. He stated that members have to be mindful of these differences and assist residents when needed. He also stated that the Code provides some potential for flexibility, cost of variable, and costs relative to the scale of a project. He stated that applicants must make good arguments for commercial projects based on the scale of their projects.

Mr. Dale said there are always gray areas. In the case of a demolition permit, it is incumbent upon the applicant to show that the estimates of repairing a property prove to be unaffordable. This would be an example of how financial considerations weigh on the merits of an application.

Mr. Fishman stated that Dublin has always had high standards. The applicant must understand that their design affects the neighborhood and the entire community. Therefore, lower standards should not be permitted.

Mr. Dale stated that regardless of where standards are set, someone will say the minimum standards are too high.

Mr. Dale also mentioned that a lawyer representing an application may present in a very different way than a resident.

Mr. Alexander agreed there is a difference between an individual representing himself versus having a lawyer represent them.

Mr. Dale reiterated that all individuals must be treated with respect and be assisted when not well-versed of the Code.

Mr. Fishman stated that as board or commission members, we need to get the best project for Dublin. A Variance could be granted in one case for aluminum storm doors, which have unique problems for example. Then many in the area request the same. Members need to be careful in lowering a standard or it easily spirals downward.

Ms. Call stated that the PZC may find the applicant is not meeting the Code in one area and may allow it by moving the bar a little higher for something else within that project to achieve a balance.

Mr. Dale stated that these are discretionary decision. If the Code creates a gray area, members must stay within the realm of discretion. Be proportional to the Code to remain legal.

Ms. Martin concluded the conversation by acknowledging the differences of each board and commission and that addressing the cost of a project should not be the driving factor of the decisions made. Consider the scale of the project. Perhaps the solution could be a project on a smaller scale.

2. How do the Boards and the Commission ensure projects are designed with high-quality without designing projects from the dais?

Ms. Martin reported that her group said the process provides the applicant with an opportunity to come back with a revised proposal when they are not in a position to meet conditions of approval. She asked when is the line drawn when trying to compromise to many things. Members need to uphold standards in the Code and be consistent in decision making.

Ms. Holt's group agreed aesthetics impact the economic side. This is when a lot of discretion comes into play. Board and commission members need to be mindful of this.

Mr. Dale stated that members should not be advising the applicant on how to get their proposal to a better project level but instead, communicate the applicant is nowhere near meeting the Code for the proposal to be approved. Members should not be designing from the dais even when the applicant wants

guidance. At the same time, do not make the applicant guess. He said that members should not send the applicant away to try an 'unknown something else' only to return to find the new proposal may not be right, either. This is more of an issue in communities with professionals in the related field on the boards and commissions. This can be tough for an architect on an Architectural Review Board, an engineer that oversees the stormwater plans, or the attorney on the Board of Zoning Appeals. Applicants want approval for their project but not at double the cost.

Ms. Holt reported that her group said it is important to speak with one mind and conflicting direction in different meetings is challenging.

Mr. Alexander stated that he thought the applicant could be advised to the extent of make these changes to your proposal so it is more likely to get approved. Members need to articulate questions towards specific materials that may be questionable or new.

Ms. Call stated that on the Planning and Zoning Commission, there are seven diverse perspectives. Any one of us could advise the applicant to do a certain thing but the project may still not be approved, especially if others on the Commission do not agree. Members need to articulate why the proposal is specifically not meeting the Code. If member(s) advise the applicant to do certain changes to a plan and the applicant complies, the Commission cannot now advise the applicant to do something different. She concluded that this could happen for a myriad of reasons and does not account for the membership of boards and commissions are members terms expire.

Mr. Dale stated that communicating expectations as they relate to the Code is important. Seven members could have diverse opinions and each can have a distinct style. Again, members can simply start with the statement that the applicant is still a long way from meeting the Code for approval. The applicant has the opportunity to table the case at that point.

Mr. Alexander stated that sometimes an applicant will hire a design professional that is presenting the case for them that has little or no experience with Dublin's Code. The Board has to tell the professional and the applicant, in professional way, to familiarize themselves with the Code and that will provide direction.

Mr. Dale state this is especially true with the ARB.

Ms. Holt reported from her group that it can be a difficult balance for aesthetics when the economic costs are known. Members with experience in this area need to check their design impulses and ask questions of applicant. She said that will help determine what design ideas are more palatable and get the application to an approval.

Mr. Dale said he liked that approach. It can be hard for a professional on the Board not to alter the design.

Mr. Hounshell reported from his group that members should look at what has been approved and what has been done before. Find ways to articulate whether materials work in specific areas. Speak to character rather than stating material is not promising/had problems.

Mr. Dale stated that members will find consistency over time. Staff and Board needs to be aware of past decisions.

Mr. Houshell stated that members and staff can provide examples of other projects that worked in practicality.

Mr. Dale stated that members trying to design on the spot to perhaps save the applicant's time or effort is not the reputation we want to have for Dublin. Express to the applicant what is desired and expected. There could be a big gray area between the board and commissions which may lead applicants to be "off the mark".

Ms. Call said the last time the Planning and Zoning Commission said this to an applicant, they come back with a revised plan and they proved that the Code requirements had been met. The applicants outlined what the requirement is and how the proposal meets the requirement, one item at a time. She stated that is the best type of applicant to work with.

Mr. Dale has some final comments and then introduced the third question.

3. How do private property rights influence the Boards' and the Commission's decisions?

Mr. Hounshell – Reported for his group that homeowners do not understand how the City can have oversight with requirements for private properties. Owners will hear about a proposal for a new development and will state if it is built, it could negatively impact their property value. They will ask why now as it was not that way 20-30 years ago. We can respond by saying the Code has been modified over the years for the betterment of the community as guided by City Council. The Community Plan also directs the vision for the City. And that there are opportunities for owners to be involved/participate in making changes to the Zoning Code and the *Historic Design Guidelines*. Annexation looks more at property rights where the Code does not.

Ms. Holt – Reported for her group that people will buy homes without knowing the rules, which is more critical in the Historic District. Those buying properties in the Historic District need a full understanding of the requirements and restrictions. Owners have the ability to know what they are getting into but many owners are misguided. They need to understand that becoming residents they are to be part of the community, where homeowners have less flexibility. There is a difference between zoning in the City as compared to no zoning in a township. There can be tension between the two differences.

Ms. Call – An attitude from the homeowner could be that they bought a house where they did because it had a farm behind it and they expected that farmland to stay that way forever.

Mr. Dale – I'm hearing from Dublin, if you do not like this, go somewhere else. Acknowledge that is part of our Dublin culture. Private property rights exist but there are also obligations that come with it, especially in the Historic District. In historic districts, demolition of historic buildings is often considered when considering economic value of a property. There have been demolitions completed, which violated the Code as owners did not obtain a permit, first. There are issues when rezoning occurs. Owners will complain that now that their property has been rezoned, they are unable to use it in the same way. This would be the time to consult with Mr. Boggs.

Ms. Damaser – The property owner may think the rezoning had affected how the property can be used but may not have.

Mr. Boggs - People do not understand what their rights are and it is difficult to properly articulate this information to them but there are gentler ways to relay the facts.

Mr. Dale - Acknowledge it is there but do not let the applicant intimidate you.

Mr. Dale - Private property versus public interest needs to be weighed and varies in other parts of the country. As members of the B&C, your job is to apply the rules City Council has set for you to apply.

4. How do the Boards and the Commission address determinations that involve the Code language that is unclear or “silent” on an issue?

Mr. Dale said the reality of devising a Zoning Code is that not all situations can be anticipated.

Ms. Martin reported for her group to search for context to see if the subject was approached elsewhere. Research other applications.

Mr. Hounshell reported for his group and said that Mr. Boggs should be contacted when determinations may be based around an item that has not been identified in the Code.

Ms. Call stated that staff should be kept up-to-date with training provided in case the subject comes up in the future. Staff should be the conduit if something new is found and not addressed yet or not documented, purposely. Staff's knowledge is important as member terms may only last two to four years. When this situation occurs, Staff needs to bring it forward to City Council to undertake code modifications when necessary.

Ms. Holt stated that her group had similar conversations and that we should either update the Code or make decisions based on the existing regulations.

Mr. Deshler said he was familiar with a recent case that pertains to this. The bottom line was “pergola” had not been identified in the Code along with several other terms that were similar as well as “open and uncovered.” It was the applicant's lawyer/representative who brought attention to the missing definitions so he based his argument on definitions found in the Webster Dictionary and how the terms were defined in Scottsdale, Arizona's Code due to the client needing shade from the sun. The Board of Zoning Appeals defined the gap and as a result, directed City staff to amend the Code. As the Chair hearing this case, he was worried if it went the wrong way, anyone wanting to build a pergola would not get a permit. The vote was close but the application was rejected. The applicant still had the opportunity to pursue a Variance at that point.

Mr. Dale said it is common practice to accept a dictionary definition when it is not written in the Code. When faced with this situation and the Board finding it is “just stuck”, it is okay to table the case as more information is needed to make a sound decision, which could not be solved in the moment. Request that Staff conduct further research or for Mr. Boggs to do what he could.

Ms. Call stated that Planning and Zoning Commission members are not permitted to ask that a case be tabled.

Mr. Boggs said that based on their Rules and Regulations, the applicant has to agree to table a case.

Ms. Call clarified that if the applicant wants to still move forward, the Boards or Commission have to take a vote.

FEEDBACK

Mr. Dale asked if there was anything further the groups would want to explore. Specific topics can be requested for training. [Hearing none.]

Ms. Call said she liked the format of having discussion questions to cover.

Mr. Deshler agreed as the questions were relevant so it was good way to go.

Mr. Dale asked what the members thought about virtual meetings. For him personally, the meetings do not leave an impression as opposed to a meeting in person.

Mr. Alexander asked if anyone had found that people were acting differently on Zoom or when a meeting was being broadcast live.

Mr. Deshler answered he had not noticed a difference.

Ms. Rauch also answered she had not noticed a difference.

Mr. Dale predicted that meetings would not be conducted as they had pre-Covid and live-streaming meetings is an expectation from the public.

Ms. Rauch thanked all the members for their participation and Mr. Dale for being present for the training.

The meeting was adjourned at 8:20 pm.