

Chapter 11

Know What to Expect

Do you have the sense that one of the keys to success in a zoning campaign is to be fully prepared? I hope so.

Knowing what to expect at a public hearing is essential to getting what you want from zoning. That means taking the time to prepare, and preparing starts with observing the board at work.

Once you have decided to come in with some type of zoning application and you know what board you will appear before, start attending its meetings. One night is probably not enough to give you a sense of the full range of how the board handles its business—plan on going three or four nights. This will also give you an opportunity, even before your preapplication meeting, to introduce yourself to the individual council, commission, or board members and explain why you are “mysteriously” sitting there. “Hi, I’m Robin Jones, the owner of Robin’s Majestic Pizza, and I’m going to be filing an application with you to add an outdoor dining area at the rear of my restaurant. I’ve never been before the zoning board before, so I thought I would come and observe for a couple of evenings.”

What a great way to introduce yourself and your project, and to address your concern about being fully prepared. You’re looking good already.

If you've never spent time in these meetings, you may be surprised at what goes on. These are informal meetings. The board members bring their own personal experience and knowledge of the community to bear in making their decisions. This is exactly as it should be. Formal rules of evidence and courtlike presentations seem stilted and out of place—because they are. You can be businesslike without acting like a television show about lawyers. I used to laugh to myself at trial lawyers appearing in front of zoning boards when they would accidentally say “Your Honor,” or “May it pleased the court,” until, in arguing a case in front of a state supreme court, I accidentally referred to the court as “the commission.” Oops. Habits are hard to change.

If this is the room that will be used for your hearing, look at how it is set up. You need to make sure you visit the room you will present in before the night of your hearing. The board is often at a table across the room facing the audience. The presenter needs to make the presentation to the board, but she shouldn't be forced to turn her back on the audience. That is disrespectful, and it makes it impossible to read audience reaction during the presentation. Sometimes a presenter stands at the side of the room and struggles to face the board half of the time and the audience the other half of the time. Does he stand to the side and use a pointer or laser? Or does he stand in front of the exhibit, making it impossible for the audience to see?

If you are going to show photographic slides or use a computer projection as part of your presentation, where will the screen be? Is there a place to put the projector? Will the audience be able to see the presentation at the same time as the board? If yours is a small and informal presentation, will you be able to get close enough to the members of the board to have them see your presentation and to be able to make eye contact with them?

Note things about the presentations of others that don't work well. Are the presenters prepared? Are they able to display their

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exhibits effectively? I guarantee that you're going to see some presenter, even a professional, such as an architect or engineer, struggle with big clips and a set of plans slipping off an easel. You'll notice how well the presentations go when the few exhibits are dry-mounted on foam panels and arranged in the order that they are presented.

Look at the appearance of some of the presenters. If somebody has a lawyer from out of town, does she look like she's ready to argue a case in the U.S. Supreme Court in her formal designer suit, while everybody else in your rural county is dressed like they just came from a tractor pull contest? On the other hand, did somebody's traffic engineer look like he selected his wardrobe at a tag sale, communicating a lack of professionalism?

And speaking of demeanor, how do the various presenters play to this board? Are they direct, or are they wordy? Do they make eye contact, or do they look down at the floor and shuffle their feet? Do they hide behind a podium, or do they step out and speak with animation? Do they try to be helpful in explaining complex issues, or do they talk down to the board?

We had one contentious case in which we were representing the board. The developer's engineer, in frustration and obvious anger after many nights of hearings, barked at a board member in response to a fair question about an exceedingly complex scientific matter: "Just exactly what is it that you don't understand?" This one statement was probably the best remembered in some 25 nights of hearings before multiple boards and commissions. It did not prejudice the board members, but it was a window into the developer's attitude and was patently disrespectful. You don't want your application and your team to be remembered for one persnickety response.

Look around the room. Is it going to be big enough for you and your supporters? If it isn't, you need to talk to the staff about the

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expected turnout. One of the worst things that can happen is to have 100 people show up in a room that fits only 50. We will talk later about how to handle that situation.

How long does the presentation take, both for the applicant and for the opponents? Does it look as if people thought about what they were going to say before the session, or are they shooting from the hip, apologizing along the way: "I really didn't have time to prepare, but let me say this . . ."

Did the applicant keep his presentation to a reasonable length, or did he go on far beyond what the commission needed to know? Were the opponents direct and substantive, or were they just venting? Did the board seem to get bored with any part of the presentation or simply "tune out" at some point? Did either side concede the wisdom of someone else's position with honest recognition? "I agree that there will be more traffic congestion, and I understand Mrs. Smith's concerns, but overall, we will be improving circulation in the area, particularly through the coordination of signalization along Main Street." Or did the presenter stubbornly stick to the hard line, even though you could see the board members react incredulously: "As I said previously in my testimony, there will be no adverse impact from the minor increases in traffic volumes, and any minor degradation in the level of service will be strictly within the limits of the acceptable range under the standards of the Institute of Traffic Engineers."

Observe the deliberations of the board members just as carefully as you observe the public hearing. Did you discern any agendas of individual board members? Do they decide by consensus, or are there factions on the board? Do they vote along party lines? Do they vote depending upon where they are seated? This is sometimes the case—people of like minds often sit next to each other and vote together. Sometimes you will see them whispering back and forth during the hearing and deliberations.

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Do you have the names of everybody on the board? Do you know the alternates who may substitute for regular members? What do you know about them and their interests?

How does the staff relate to the board? Is the staff subservient and professionally remote, or is the staff an equal partner with the board? Do the board members rely heavily on the staff for guidance in conducting the hearing and making decisions?

How are the proceedings recorded? Is there a stenographer, or is it on tape? Will you be tied to a microphone, or will you be able to move around?

How do the board members conduct their hearings? Do they expect the presenters to stick to a fixed period of time? Do they ask questions throughout the presentation, or do they save them until the end? Do they seem to get bored with long presentations, or are they truly interested in hearing the details? Is it apparent that they have reviewed the application in advance, or do their questions suggest that they are looking at the materials for the first time? How do they handle opponents? Do they give them a fixed period of time to speak and not allow them to speak again until everyone has had a chance to speak, or do they let some individuals go on and on?

Every town, city, and county is different in how it conducts its zoning business. Every board and council is different and has its own culture. Every elected and appointed official is different because of his or her background and perspective, and you cannot read a book like this and know what to expect. You must go and observe and prepare. If you do so, you will have a highly effective presentation that meets the needs of the staff and those who will vote on it, and you will absolutely optimize your chances for getting the result you want. If you don't get the lay of the land before the night of your hearing, at the very least you may be embarrassed, and at the worst, all of your effort may be for naught.