

How Much Process is Due?

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Overview of Due Process

- *Klaeren*
- 65 ILCS 5/11-13-25
- 65 ILCS 5/11-13-22
- Cases

Problem #1

- A public hearing is scheduled, and there is no quorum. Can the board still hear public testimony?

Problem #2

- A developer has invited the zoning board and city council to tour a stone crushing operation in a nearby community a week before the hearing on a zoning application for a special use permit for a similar facility. Does this create any legal concerns?

Problem #3

- A neighborhood group is doing everything they can to delay a vote on a zoning application, including speaking at length at the public hearing, requesting multiple continuations, hiring expert witnesses, etc. What can (or must) the hearing body do?

Problem #4

- A plan commission chair continuously shuts down testimony at a public hearing that is critical of a zoning application - is that legal?

Problem #5

- A resident asks to cross-examine the applicant's engineer - does the commission have to allow this?

Problem #6

- A resident at a very contentious public hearing wants the Plan Commission to subpoena a witness to compel their attendance and testimony. Does the Plan Commission have to allow this?

Problem #7

- The commission wants to establish a 3 minute time limit for individual testimony but plans to allow the applicant as much time as he needs to present his application. Can the commission do this?

Problem #8

- At the close of the public testimony, the commission votes to deny a zoning application. There was no discussion by the commission and the commission did not adopt any written findings. Is this a problem?

Problem #9

- After the plan commission has forwarded its recommendation to the city council, the council asks for additional information from city staff about the application and applicable zoning regulations. Must this go back to the plan commission or can the city council consider the additional information in making its decision?

Problem #?

- What situations have you faced in your community?

Tips for More Effective Hearings

- Consider establishing and adopting rules of procedure for conducting public hearings – provide copies of the rules to all interested parties and their representatives at the beginning of any contentious hearing or application process
- Prepare a brief “outline” of how the public hearing will be conducted that is available to the public so they understand the process (see handout materials for an example)
- Be flexible
- Err on the side of allowing testimony, but remember process also applies to the developer (not just to neighboring property owners)

For More Information...

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