

## CHAPTER 4: PLANNING COMMISSION MEMBERSHIP, ORGANIZATION, MEETINGS, AND CONDUCT

### PLANNING COMMISSION MEMBERSHIP

The MPC states that municipal planning commission must be comprised of at least three but no more than nine members. Each of the Centre Region municipalities have individual planning commissions that consist of seven members. Planning Commissioners must reside in the municipality they represent.

#### *APPOINTMENT TO THE PLANNING COMMISSION*

Planning Commissioners are appointed by the municipal governing body through the municipality's appointing authority. When a vacancy exists on a planning commission, municipal residents are provided with the opportunity to apply for appointment to the Commission. Applications vary by municipality but typically serve to provide the governing body with some background on applicants, including their skills and interests in serving. Applicants may also be asked to attend governing body meetings to introduce themselves and answer any questions about their qualifications.

The term of a planning commission member is four years. If a planning commission member resigns or is removed from their appointment prior to the end of their term, any person appointed to fill the vacancy would serve out the remainder of the unexpired term.

#### *REMOVAL FROM THE PLANNING COMMISSION*

It is possible for a Planning Commission member to be removed from office, which requires a majority vote of the governing body. Removal of a planning commission member cannot take place due to a dislike of a particular individual, their viewpoints, or associations and must be based on a just cause. Removal could occur for any of the following reasons:

*Malfeasance* – committing an unlawful act in office

*Misfeasance* – committing an unlawful act in an unlawful manner in office

*Nonfeasance* – failure to perform the duties of the office

If a planning commission member is threatened with removal, they must be provided with 15 days advance notice of intent by the governing body prior to the required vote.

### PLANNING COMMISSION ORGANIZATION

At the beginning of each calendar year, municipal planning commissions typically hold an organizational meeting to elect a chairman and vice-chairman and make appointments to any outside bodies on which their representation is required. In some municipalities, a secretary is also elected.

The chairman presides at all meetings, decides points of order and procedure, and performs other duties normally conferred by parliamentary usage on such officers. The vice-chairman performs these duties in the absence of the chairman. In the event that both the chairman and vice-chairman are unable to perform their duties, a member of the municipal planning commission will be elected to temporarily serve in this capacity by the members present at the meeting.

## *CHAIRING THE PLANNING COMMISSION*

Successful operation of a planning commission largely rests on the attitudes and abilities of its chairman. The chairman should understand the issues before the commission as well as his or her fellow members. A successful chairman can maintain order throughout meetings and help build consensus amongst the planning commission even when faced with the most complicated and controversial issues. A chairman should be selected based upon their leadership ability as well as ethics, integrity, and fairness.

## *RESPONSIBILITIES OF THE CHAIRMAN*

The municipal planning commission chairman has the responsibility to preside over meetings and may be involved with setting meeting agendas in conjunction with municipal staff. The chairman can also call special meetings as needed. In addition to these formal responsibilities that are typically outlined in adopted bylaws, the chairman should also do the following:

- **Running a Meeting.** The chairman is responsible to run an orderly meeting and conduct the Planning Commission's business in a fair and timely manner.
- **Maintaining Order.** The chairman should maintain order throughout public meetings. Members of the public should not be allowed to clap or cheer for testimony that is presented by other members of the public or by the Planning Commission. The chairman should not permit fellow Planning Commission members to accuse or challenge one another or persons testifying.
- **Keeping Business Moving.** The chairman should ensure that the business of the Planning Commission continues to move forward in a reasonable amount of time. At times, Planning Commissions can get weighed down with details on proposals or requests, which can needlessly delay action. The chairman should summarize facts presented by the Commission and move items forward to a vote once relevant testimony has been expressed.
- **Managing Public Testimony.** Allowing the public to give testimony to any proposal is one of the many purposes in having public meetings. While public input is valuable and important, the chairman should encourage those providing testimony to keep comments relevant to the issue at hand and to provide constructive commentary. The public should also be encouraged to not provide additional testimony that has already been expressed by other members of the public. Depending on the number of people interested in addressing the Planning Commission, the chairman should provide reasonable time limits to those wishing to speak in order to keep business moving. Once the public comment period is closed, the only persons that should be able to speak are those on the Planning Commission. The Commission may also ask specific questions of the applicant if necessary following the public comment period.



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Managing public testimony when discussing contentious requests can be challenging. Maintaining order during public testimony is essential to ensuring that all parties have the opportunity to speak and have their comments recorded.

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- **Preventing Arguments.** The chairman should prevent to the best of his or her ability any arguments or criticisms between Planning Commission members and the public or amongst Planning Commission members themselves. Dialogue between the Planning Commission, the public, and the applicant should be primarily for fact gathering purposes.
- **Understanding Parliamentary Procedure.** The chairman should understand making motions, amendments to motions, the order in which business is conducted, etc.

## PRACTICAL ADVICE FOR PLANNING COMMISSION MEMBERS

There are numerous things that Planning Commission members can do to facilitate a meeting that is both efficient and meaningful. The following practical advice can help planning commissioners be prepared for and valuable in their role as representatives of the community:

- **Be Familiar with the Centre Region Comprehensive Plan and Municipal Zoning Ordinance.** These two documents will provide the basis for many of the decisions that are made. Understanding the goals and recommendations of the comprehensive plan will help guide decisions such as ordinance amendments, zoning designation changes, development review, etc. The zoning ordinance is one of the primary tools used to implement the comprehensive plan and having a knowledge of its contents and requirements is crucial to effectively reviewing development proposals.
- **Read the Agenda Packet in Advance of the Meeting.** Municipal staff will typically provide a presentation for items on the Planning Commission agenda, however, these presentations normally provide an overview of the issue at hand. Reading the agenda prior to the meeting will help familiarize Planning Commissioners with the facts that are needed to make an informed decision.
- **Visit Development Sites.** Although not always warranted, a quick visit to the site of a proposed development can provide perspective on what is being proposed and the impacts it may have.




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Visiting a development site can help planning commissioners become familiar with the proposed development and the surrounding area. If you plan to walk on the property, it is generally a good idea to contact the applicant to let them know that you would like to visit the site to be properly prepared.

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- **Don't Form an Opinion Before Knowing All of the Facts.** While agenda packets typically contain a staff's recommendation along with facts to support it, it is important to hold off on forming an opinion until all facts have been presented. Additional information may be provided during public testimony that may change a recommendation.

- **Use the Chairman to Keep the Meeting Orderly.** Relying on the chairman to direct and control the meeting can help ensure that order is maintained. At times, members of the public may ask questions of the Planning Commission or applicant. Allowing the chairman to do something as simple as indicating that a question has been asked and then allowing it to be answered can result in a controlled meeting.
- **Be Part of the Discussion.** One of the keys to building consensus on any decision is discussion. Decision making is improved when all members contribute to discussions.
- **Ask Questions.** Planning Commission members should feel free to ask questions of staff, developers, applicants, and the public whenever the need arises. It is better to ask questions to obtain facts rather than make uninformed decisions.
- **Focus on Issues.** While details are important, getting lost in the details can prolong discussion and delay resolution on proposals. Planning commissioners should strive to understand the substance of the matter and not dwell on minor details that will not affect the outcome of the proposal.
- **Use Staff as a Resource.** Professional staff provides technical assistance such as research, analysis, and facts that can be used to formulate a decision. While assigning tasks to staff is typically at the purview of municipal management, Planning Commission members should let staff know what information they need to make an informed decision.

## PLANNING COMMISSION MEETINGS

Municipal planning commission meetings are typically held once to several times a month and provide an opportunity for the commission to conduct official business such as reviewing development proposals, drafting ordinance amendments, working on long-range plans, etc. Each municipality publishes a meeting schedule at the beginning of each calendar year.

There are generally three different types of Planning Commission meetings, and they include study (or work) meetings, regular meetings, and special meetings. Study or work meetings are typically held to provide the Planning Commission time to conduct research or analysis on items before the commission. Final decisions cannot be made at study meetings.

Regular meetings are typically held on a monthly or semimonthly basis and allow for regular business requiring formal action to be conducted. A special meeting can be held to discuss and act upon an issue that could not be addressed in a regular meeting due to time constraints or to act upon an issue that is time sensitive.

All planning commission meetings are open to the public. Planning commission meetings can only be held if a quorum or majority of appointed members are present.

### Parliamentary Procedure

Planning Commission meetings are typically operated under Robert's Rules of Order, which basically provide a set of conduct at meetings that allows everyone to be heard and make decisions without confusion. Robert's Rules of Order are often adapted within Planning Commission bylaws to help meet the needs of the

individual municipality. These parliamentary procedures help ensure an orderly meeting, provide consistency and predictability in how items are addressed, and provide opportunities for public input. While Planning Commission members can quickly understand the basics of parliamentary procedure after a few meetings, there are numerous resources online that provide additional background on subjects ranging from how motions should be made to disciplinary action.

### **Order of Business**

Most planning commission meetings will follow a set order of business and may be identified in the Commission's bylaws. This order of business helps create predictability for the public and also provides an orderly flow. The following is an example of the order that a regular planning commission meeting may be conducted:

- Call to order
- Approval of the minutes from previous meetings
- Citizen comments
- Consent, Action, and Discussion items
- Other business
- Adjournment

### **Making Decisions and the Need for Findings**

While many land use issues and development plans are ultimately approved by the municipal governing body, the planning commission should thoroughly vet each item on its agenda and provide a recommendation that is consistent with its findings. This ensures that the governing body is not only provided with the best advice, but also ensures that the reasoning behind the planning commission's recommendation is well thought out and documented.

#### **Types of Decisions**

Planning commission decisions are either legislative or administrative in nature. These types of decisions are further described as follows:

**Legislative Decisions** - Legislative decisions are decisions that make or interpret policy. These can include but are not limited to comprehensive plan adoption or amendments, rezonings and zoning code amendments. The key element of legislative decisions is that they are meant to apply equally to everyone in the community, not just to specific groups or individuals.

**Administrative Decisions** - Generally, administrative decisions involve those that have a direct effect on the rights and liabilities of an individual or a small group of identified persons. Administrative decisions can include land development plan approval, review and approval of planning module components, and conditional use permit requests.

#### **Types of Motions**

When reviewing any application before it, the planning commission will typically have three choices with how to proceed. These three choices include:

**Approval or Recommendation to Approve:** A motion to approve could be appropriate if the Planning Commission was charged with reviewing land development related plans and rendering a final decision. Approving any application is appropriate if the request complies with the ordinances of the municipality or can conform so long as conditions of approval are met.

A recommendation of approval may be appropriate for legislative or administrative decisions that will ultimately be acted upon by the municipal governing body. A recommendation to approve can include conditions that the planning commission feels should be required if approval is granted. In the case of a legislative action, a recommendation to approve indicates support of the proposal from the planning commission.

**Continuance:** The planning commission may continue consideration of an item to a later date whenever it finds that additional evidence is required, that potential alternatives need further study, that significant revisions are needed to make the application consistent with municipal ordinances, or that it is otherwise desirable for the commission to take the item under advisement. The Commission may also continue an item if the applicant fails to appear or is unable to appear for any reason.

Granting a continuance can be useful when the applicant is willing to make revisions to the project or the request. It is important to keep in mind that a continuance will commonly require additional staff time to prepare agendas and recommendations as well as additional time for the planning commission to review the request at a subsequent meeting. If the applicant seems unwilling to make modifications that the planning commission feels are necessary to receive approval or a recommendation to approve, the commission should consider denying or recommending denial of the request.

**Denial or Recommendation to Deny:** A motion to deny a request could be appropriate if the Planning Commission was charged with reviewing land development related plans and rendering a final decision. Denial or recommending denial in regards to an administrative decision is appropriate if the project does not comply with ordinance requirements and the applicant is unwilling to make necessary modifications to make the project compliant.

Recommending denial of a legislative decision may be appropriate for a wide variety of reasons. Legislative decisions are more subjective than administrative ones, however, solid findings for recommending denial should be provided. Some of the reason to deny a request could include but is not limited to the request not being consistent with the community's long range plans; the request would result in harm to the health, safety, or welfare of people or property in the vicinity; or the request would have other negative impacts on the community.

#### The Need for Findings

Whenever the planning commission takes action on a request or application, it is imperative that findings of fact are provided that support the commission's decision. Findings of fact provide a rationale for the planning commission's action and are a critical component of the decision making process. Findings provide the applicant, the public and the governing body with the thought process



and reasoning that informed the planning commission's decisions.

Findings of fact serve the following purposes:

- To provide a framework for making decisions which enhances the integrity of the review process;
- To facilitate orderly analysis and reduce the likelihood the planning commission will leap randomly from evidence to conclusions;
- To serve a public relations function by helping to ensure parties that decision-making is careful, reasoned, and equitable;
- To enable parties to determine whether and on what basis they should ask for judicial review and remedies; and,
- To apprise the reviewing court of the basis of the agency's decisions.



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Adopting findings of fact related to any planning commission decision or recommendation is crucial. Findings of fact provide a nexus between facts related to a request and the planning commission's official action.

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When making findings, the planning commission can often rely upon facts presented in staff reports. A staff report will often include staff's recommendation to the planning commission and provide reasoning for that recommendation. It is common for a planning commission to cite a staff review letter or report when their action is consistent with staff's recommendations. Additional findings beyond those provided by staff can also be cited.

If the planning commission was not provided with a recommendation from staff or are making a decision contrary to staff's recommendation, findings should be made that support the commission's decision. These findings should include, where possible, evidence that can be referenced. For example, if the planning commission finds that a land development plan does not meet a section of the municipal ordinance and the applicant is unwilling to amend the plan accordingly, such a finding could be made to support a denial or recommendation to deny.

### Due Process

Due process, as outlined in the Constitution of the United States, applies to local planning decisions and zoning laws. While the courts cannot require municipalities to make wise planning decisions, these decisions must be fair. The Planning Commission must respect equally the rights of all parties who appear before it. Some important elements of due process in relation to the Planning Commission are:

- Adequate, advance notice of meetings;
- Availability of staff reports and other information needed by the public to more fully

- understand issues;
- The opportunity to be heard at public meetings;
- Full disclosure or the chance to hear, see, or review all the information available to the Planning Commission in its deliberations; and,
- Findings of fact backed up by substantial evidence on the record to support the Planning Commission's decisions.

Planning Commissions should ensure that decisions are fair, impartial and objective, unbiased even by the appearance of having been privately influenced.




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Allowing the public the opportunity to address the planning commission is a key component of due process. The planning commission chair should always provide the public with the opportunity to address the commission for each business item on the agenda.

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## PLANNING COMMISSION CONDUCT

### Acting in the Public Interest

Planning Commissions are charged with conducting the public's business and must do so in the public's interest. Rather than acting on behalf of a few persons that would stand to benefit from its actions, the Planning Commission should make decisions that provide benefits to society at large and not to selected groups.

Planning Commission members need to determine what constitutes the public interest as decisions are made. Some things to consider when analyzing the public interest include:

1. **Remember Who the Client Is.** Planning Commissioners represent the community as a whole and must make decisions on their behalf. Whether or not members of the public appear before the Planning Commission and provide testimony, Commissioners must act on behalf of everyone in the municipality.
2. **Question Who Benefits from the Decision.** Does the applicant benefit at the expense of the public? Would granting the request be mutually beneficial for both the applicant and the public?

### Legal Requirements

Planning Commissions are public bodies and therefore it and its members must obey state laws regarding open meetings, financial disclosure, and ethics. In addition to these legal aspects, Planning Commissioners must also avoid ex parte contact, which is the attempt by any person to influence a Planning Commissioner outside of the public form. This section provides an overview of these legal aspects of public service.



## **THE SUNSHINE ACT – PENNSYLVANIA’S OPEN MEETINGS LAW**

### THE CONCEPTS OF THE ACT

The act states that “the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.” 65 Pa.C.S. § 702 (a)

The act “declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this chapter.” 65 Pa.C.S. § 702 (b)

### WHY DO WE HAVE AN OPEN MEETING LAW?

1. Protect the Public
  - a. To avoid decision making in secret
  - b. To promote accountability by encouraging public officials to act responsively and responsibly.
2. Protect Public Officials
  - a. To avoid being excluded (notice)
  - b. To prepare and avoid being blind-sided (agenda)
  - c. To accurately memorialize what happens (minutes)
3. Maintain Integrity of Government
4. Better Informed Citizenry
5. Build Trust between Government and Citizenry

### WHAT CONSTITUTES A MEETING?

A meeting is “Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.” 65 Pa.C.S. § 703

### WHO MUST COMPLY WITH THE OPEN MEETING LAW?

Agencies must comply with the law. “Agencies” as defined by the act includes but is not limited to the General Assembly, school boards, municipal boards or commissions, boards for state funded universities, etc. 65 Pa.C.S. § 703

### WHAT IS REQUIRED UNDER THE OPEN MEETING LAW?

#### 1. Notice

The open meeting law requires that an agency gives notice of its first regular meeting of each calendar or fiscal year at least three days in advance of the meeting and that it shall give public notice of the schedule of its remaining regular meetings. A minimum of 24 hours notice must be given for any special meetings. Notice is not required in the case of an emergency meeting or conference. 65 Pa.C.S. §709

Notice must be given in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located. Pa.C.S. §709

## 2. Public's Rights

The public has the right to:

- Attend
- Speak during public comment periods
- Listen
- Tape Record
- Videotape

The public has no right to:

- Disrupt the meeting

## 3. Minutes of Meetings

Meeting minutes must be kept of all open meetings of any agency. Those minutes must include:

1. The date, time, and place of the meeting.
2. The names of all members present.
3. The substance of all official actions and a record by individual member of the roll call votes taken.
4. The names of all citizens who appeared officially and the subject of their testimony.

Pa.C.S. § 706

### **CONFLICT OF INTEREST**

Public Officials are elected or appointed to serve the public at large and as such, should not be beholden to any special interest when making decisions. There are times when formal actions are brought before public bodies in which one of its members may stand to benefit financially, depending upon the outcome. In such cases, there is a potential conflict of interest. The Pennsylvania State Ethics Act defines a conflict of interest as: *Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.*

The Pennsylvania State Ethics Act further states that *“Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section*

*makes the majority or other legally required vote of approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein.”*

If a Planning Commission member believes that acting on any item would qualify as a conflict of interest, the Commissioner should declare such a conflict and disqualify themselves from taking part in discussion or action on the item. Due to the complexity of the Pennsylvania State Ethics Act, it is advisable that Planning Commissioners disqualify themselves when in doubt on whether or not their actions could be perceived as a conflict of interest.

### **EX PARTE CONTACT**

As was mentioned in previous sections, Planning Commissioners should avoid forming opinions prior to hearing all of the facts related to any decision. Ex parte contact occurs whenever someone attempts to influence or secure the vote of a public official outside of a public meeting. Ex parte communication is a violation of open meeting laws because you are giving one person unfair advantage by discussing a business matter outside of a public meeting where everyone present would otherwise have access to the same information.

Ex parte contact can occur in a variety of ways, many of which are informal and unintentional. Ex parte contact can occur through telephone calls, informal meetings, and casual encounters. Ex parte contact can involve applicants, members of the public, friends, neighbors, and even relatives. The most effective way to avoid ex parte contact is to avoid discussions of planning commission related business outside of public meetings. Persons interested in discussing planning items should be encouraged to attend the next Planning Commission meeting and share their thoughts for the benefit of all present.



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Planning commissioners should take special care to avoid discussing applications outside of public meetings. Official business should only be discussed at a public meeting where all parties are presented with the same information.

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