PUBLIC HEARINGS, CONTROVERSY, AND THE WRITTEN RESPONSE

The public hearing, and what should lie before it and behind it, is discussed here with emphasis on theory, in the hope that this will be a useful guide for practice. The following matters are considered:

1. Use of language and logic in preparation of the planner's proposal.

2. Need for passive public consent in some cases, active public support in others, and the difference between public consent and public opinion.

3. What the public hearing is for, and how to prepare the public for it.

4. Help for applicants where the proposal is not the planner's.

5. How to put the hearing to work through the medium of the written response.

PREPARING THE PROPOSAL

Skillful use of two basic tools, language and logic, is particularly important in preparing the proposal (report, plan, ordinance or whatever it may be).

Language is not merely the written or spoken word. It includes statistics, charts, maps, pictures, colors, hachure, symbols, and other devices for communicating ideas. The planner preparing to communicate should have what he wants to say firmly in mind, use the right medium, and say it simply and well. An idea firmly grasped can be clearly expressed. The firmer the grasp, the simpler the language. The simpler the language, the more effective the communication.

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In its "highest and best use," language is a medium for communication of ideas. In lower forms it may be mere social background noise, carrying few ideas or none, or a substitute for the animal growl, roar, or snarl. Used badly, language creates confusion, somnolence, an eagerness to move away from the source, or even well-merited suspicion and hostility.

It cannot be too strongly emphasized that the planner preparing to communicate should have what he wants to say firmly in mind and say it well. Too often, he throws a net of convoluted, complex jargon toward a half-glimpsed idea in the hope of moving in and capturing it later -- if it is really there. As a preliminary exercise, this may be harmless. Done in public, it can be fatal -- to the idea (if any), to the planner, and even to local planning.

As an example, a recent planning school graduate discusses the drafting of a zoning ordinance. He starts by saying: "The ordinance should be clear and concise." This is an excellent principle. But he hasn't yet learned to use it. As a sample of what he does in practice, he concludes by exhorting: "The ordinance must be carefully tailored to ___'s specific problems, e.g., controls should initially be founded on the savings to the public they will make or the higher living standards they can produce with little or no hardship, and should ultimately be circumscribed by the limited economic resources (i.e., not thereby discourage needed economic development)." As a hip-shot from a wary political candidate uncertain of his audience, this 55-word sentence might be excusable. As a considered opinion by a professional planner, it leaves much to be desired, both as to substance and as to expression.

Language like this is often substituted for thought in planning reports, including too many exposed to the public for comments at hearings. This accounts for some of the public comments.

An idea which can stand by itself can be expressed in simple English. An idea which must be insulated, enshrouded, qualified, and propped by intertwined verbiage is not ready for release into the world. It needs conditioning. It needs exercise. Turned loose fat and flabby, it will trip over the first obstacle and never rise again.

If the planner is to communicate with a public which is under a barrage of efforts to get its attention, he must first get a firm grasp on what he wants to say, and then say it as briefly, simply, and directly as possible. There are two rules on this: (1) The firmer the grasp, the simpler the language, and (2) the simpler the language, the more effective the communication.

Logic is a stern discipline which should guide planning and public decision. It requires careful assembly and definition of basic premises and a rational evolution of ideas from this base. The ideas must follow from the premises and fit together without internal contradiction.

In theory, the prime virtue of planning is that it applies logic to the shaping of the human environment. Planning is most vulnerable to attack when it fails to practice the logic it preaches -- as it often does. We drive against urban sprawl by pressing for more single-family detached housing on big lots. We seek to promote the trade potential of the CBD by surrounding it with public housing for the poor, most of whom work someplace else.

Application to mail at second-class postage rates is pending at Chicago, Illinois.
Until the planner has used language and logic successfully in preparing a proposal, the proposal is not ready for the public hearing. The first test is whether the work is clear and well reasoned. If it isn't, the public won't be able to use it even if it does accept it. Basic concern should be for the utility of the product. Whether it is ornamental is a secondary consideration.

PUBLIC CONSENT AND PUBLIC OPINION

There is a very real difference between public consent and public opinion. Before almost any planning proposal can be effective, at least passive public consent is required, and this is relatively easy to obtain. For some proposals, however, the powerful support of active public opinion may be essential, and this is often hard to get.

Public consent is merely a passive consensus which permits. Public opinion, favorable or opposed, is active. According to the Encyclopaedia Britannica:

There has been little agreement among political scientists, sociologists and social psychologists on the exact meaning of public opinion . . . . There are relatively stable beliefs which, at any given time, are not involved in the opinion process. A state of agreement following an opinion controversy is a consensus. Publics reach consensus on ethical, political and economic issues. Even larger publics may be in substantial agreement . . . . One may consider that public opinion deals with those topics which are controversial and discussible within the publics, and not with those aspects . . . . which are relatively fixed.

Public consent, then, is like the submerged portion of an iceberg, usually moving predictably with the current. But there is a top to the berg, a spectacular superstructure above the shelter of the sea. Gale winds against these pinnacles may change the course of all the great bulk beneath. The part above water is like the arena for public opinion. That below is akin to the area of passive public consent.

The next quotation from the encyclopedia indicates both why the job of the planner is difficult and why it is important:

Nineteenth century commentators stressed the rationality of the opinion process; those of the 20th century do not. . . . After 1900 the developing science of social psychology increasingly emphasized nonrational factors involved in the opinion process, and the manipulative techniques of the practitioners of publicity, advertising and propaganda further eroded faith in rationality. Political democracy, however, holds to the principle that the opinions of some men are based on reason, and that it is possible to bring popular judgments to positions that are rationally defensible. [Emphasis supplied.]
In that context, the function of planning in a political democracy becomes more clearly defined:

1. The planner should most assuredly be one of those whose opinions are based on reason. If they are not, he has no business calling himself a planner.

2. His job is made more difficult by the growing influence of nonlogical decision in the formation of public opinion.

3. In spite of this, he must persuade public officials and the opinion-forming sector of the public to be logical in public affairs.

It need hardly be said that if logic plays an ever-diminishing role in determination of public policy and action, neither planning nor political democracy can long endure. Publicity, advertising, propaganda, or no, there comes a point where people must either use their heads or prepare for the coming of Big Brother.

WHAT THE PUBLIC HEARING IS FOR

The public hearing is part of the process by which the opinion-forming sector of the public may be educated -- if they can be induced to attend.

The public hearing is part of the process by which the planner, as well as members of boards, commissions, and legislative bodies, may be educated.

The public hearing is a testing ground:

1. For determining the plausibility, rationality, and clarity of the proposal.

2. For determining how much of the proposal falls within the area of passive public consent (is noncontroversial) and how much is to be the subject of active controversy.

3. For determining the range and weighing the potential effect of the controversy.

With skillful preparation and able conduct, the public hearing may be a means for increasing the area of consensus and decreasing conflict. This isn't easy. Those who are usually most strongly motivated to come often intend to air and harden their prejudices, rather than to reason.

PREPARING THE PUBLIC FOR THE HEARING

There is one thing the public hearing should not be. When the public comes to a hearing, it comes to discuss, to inquire, to be heard. If the public is to participate effectively, the hearing should not be an unveiling.
Thus it is essential that on important proposals the public be properly prepared before the hearing takes place. Notice should consist of a great deal more than the required legal announcement. The recommendation should have been presented in full, in summary, with commentary, in sections, as hand-out reports, as newspaper stories, on radio, on TV, in speeches. The public should know what the hearing is about before it is held.

If the first thing that becomes apparent at the hearing is that those attending are ignorant or confused, either the public is poorly prepared or the proposal is poorly prepared -- or both. The hearing should be a seminar stage in the education of the participants, not a kindergarten.

Sometimes the character of a really significant proposal and the success of preparation prior to the formal hearing lead to lack of attendance. Unless nonattendance is the result of poor notice, bad weather, or the selection of a date conflicting with an event of more pressing interest in the community, the absence of the public at a public hearing indicates public consent. As indicated previously, this is not the same as strong public support, but it probably means that action can move ahead without strong opposition.

On most major issues, however, there will be substantial public attendance. It is entirely normal, and should be expected, that opponents will appear without special prompting. They will feel that their interests are adversely affected, they will be suspicious, and they will be strongly inclined to express themselves against the measure in general or against specific provisions. Usually proponents are less strongly motivated. They may be raised somewhat above passive consensus, but unless there is effective organization they may stay at home, leaving the planning commission or the governing body with the feeling that the down-turned thumbs they see represent the public as a whole.

One of the continuing objectives of the planner is to bring the conduct of public affairs within the circle of logic. To support a logical position, the planner might well rally spokesmen to his support. This will have to be done judiciously and within the limits of propriety, but it can be done. If the proposal is sound, no planner should permit himself to be found facing a public hearing where opinions expressed are overwhelmingly on the hostile side. (If the proposal is not sound, the planner has a bad case of self-inflicted hardship.)

A prime hope of the planner and other officials involved is that commentary from those attending hearings will be carefully prepared and well reasoned. To this end, it should be made clear well in advance that a principal purpose is to seek any possible improvements in the proposal, and that written statements for consideration will be appreciated. This encourages specific suggestions prepared in advance. It may reduce spontaneous diatribes to the effect that all planning and/or regulation is unconstitutional and contrary to the American Way of Life. And it is a formal endorsement of the concept of community participation in public affairs.
PREPARING THE APPLICATION

Principal emphasis in this report is on hearings involving major proposals of planners, but at least parenthetical comment should be made on private application, with requests for changes in zoning as a prime example. Several techniques would be an improvement over most current practice. The first suggested below would reduce the number of futile applications (and hearings) and the rest would guide applicants in making more sufficient and purposeful presentations at hearings.

Regulations should contain specific rules, guides, standards, and requirements. If they do, and if they are well drafted, applicants, administrators, boards, and commissions will avoid much wasted motion and confusion, and there will be fewer misguided decisions. Thus, on zoning changes there can be a clear indication as to requirements which must be met before a zoning change will be considered. General reference to the comprehensive plan isn't enough. Beyond this, there should be, as examples, provisions that new districts of specified kinds will not be established on application except at a specified minimum size, with specified relation to particular kinds of streets, and so on. Extension of boundaries of an existing district will be allowable only if... To avoid undesirable rigidity, room might be left for changes initiated by the governing body or the planning commission. Thus if an applicant wants an amendment which doesn't meet the requirements set forth for privately initiated petitions but which has substantial merit, either the commission or the governing body can initiate the move.

With this kind of policy set in the ordinance by the governing body, it becomes possible to cull out obviously futile applications early, by administrative action, making public hearings unnecessary. Thus in the recently adopted Honolulu ordinance, petitions for amendments are made to the planning director, who may deny them with a report for the record unless they are in accord with amendment requirements set forth in the ordinance. Appeal from the director on such denials is to the board of appeals, and may be sustained only if the board finds that his action was based on an erroneous finding of material fact or that he had acted in an arbitrary or capricious manner or manifestly abused his discretion.

Special Exceptions and Variances

The note on the board of appeals opens the way to another broad field for improvement. On special exceptions, the ordinance should not stop with general language at the head of a mere listing of special exception uses. To the maximum extent reasonable, detailed requirements for each special exception or class should be stated in the ordinance. If drafters of ordinances will take the time to think things through to the extent indicated, it will often be found that the number of special exceptions can be materially reduced by moving some to the use-by-right category, thus lessening both the load on the board and inconvenience for the applicant.

On variances, it will help applicants and the board if ordinance language indicates matters which will or will not be considered, facts which must be
demonstrated, and findings which must be made before a variance is granted. (General wording for ordinance provisions concerning special exceptions, and detailed procedural and substantive language on variances, appears in Text of a Model Zoning Ordinance, with Commentary.)

Where applications are frequent, it may be desirable to reproduce in full or in summary the ordinance requirements concerning the action involved, and perhaps to include forms or outlines for applications.

Pre-hearing conferences. In regulating subdivisions, the device of the preliminary plat is helpful. The administrator and the developer discuss it, correct deficiencies, iron out details, and save both trouble and argument on the final plan. The same technique would be useful on at least the more complex zoning applications and appeals, and perhaps on most of them.

Pre-hearing conferences should result in better-organized presentations at hearings, adequate coverage of all essential points, and elimination of at least part of the extraneous arguments which uninformed applicants are inclined to include. During the conference, the administrator can explain reasons for requirements, as well as indicate what the requirements are. Often he can suggest changes which would be in the interest both of the public and of the applicant. The extra load which pre-hearing conferences place on administrators will generally be justified by streamlined presentations at hearings and the improved public relations resulting from clearer understanding of why the regulations are as they are.

Where the pre-hearing conference is a step in procedures, the regulations should make clear that the application as originally submitted may be changed at any time up to public notice, and may be changed between the notice and the hearing if the matter as heard is in line with the notice as advertised.

Setting the Tone of the Hearing

The conduct of the public hearing is too full a subject to be discussed in detail here, but the introduction by the chairman does much to influence the attitudes of those in attendance. Climatic extremes are illustrated by the two following introductions, where important plan or regulatory elements are under consideration. The first sounds like something from a comic opera, but is not. It is a summarized form of a kind of introduction which is painfully familiar in some jurisdictions:

This hearing is a necessary legal formality on a proposal prepared by an expert. This is a very complex matter. We on the commission don't pretend to understand all of its ramifications, but we have confidence in the man's professional ability. Legal notice has been given, and a copy of the report has been on file for the past two weeks in the city clerk's office.

Text of a Model Zoning Ordinance, with Commentary, Bair and Bartley, 3rd ed. (Chicago: ASPO) pp. 51-60.
The consultant will now discuss the proposal in general terms, after which there will be a few minutes for public discussion and questions. Following the hearing, we will take action on it so that we can meet a deadline imposed in connection with some important loan and grant programs.

This introduction closes the road to the education of anybody or the testing of anything but the roadblock. It should start a minor revolution. If it doesn't, the community richly deserves the kind of government it apparently has. Now consider another approach:

At this hearing, we consider a draft of a proposal representing the cumulative efforts of competent professional specialists and a broad range of interested individuals and organizations in the community. Since presentation at a public meeting three months ago, it has been widely publicized, distributed, and discussed.

We hope that contents of the proposal are now sufficiently well known so that a summary presentation, indicating some changes made since the early draft and reasons for them, will be sufficient at this time. Our chief purpose now is to see whether further improvements can be made. As indicated in the announcements of this hearing in the paper and on radio and television, it would be helpful if suggestions for additional changes could be framed as specific alternatives to provisions now proposed.

After the summary, in order to give maximum time for presentation of your views, members of the commission and staff will be listening more than speaking. We want to provide interpretation and factual details as needed, but the main purpose of this hearing is to get your views on the record so that they can be studied carefully later. After this hearing, any further suggestions or expressions of opinion will be welcomed, whether they come in the mail, by phone, or by visits to the planning office.

While we hope that comments can be so concisely stated that we will be able to conclude with this session, if it develops that we will not be able to hear from all who want to speak, we will continue the hearing to a convenient date in the near future.

I would like to emphasize that all suggestions offered here or following the hearing will be carefully studied by the staff and the commission, and that a written reply will be prepared on each, representing considered opinions on the changes suggested.

After your suggestions have been studied, it is possible that we may be able to make substantial improvements in the present draft. Should these be of sufficient scope, it may be desirable to prepare a revised version for public distribution and study, and to schedule a new hearing to determine public reaction to the revisions.

One thing should be made clear on proposed changes. We cannot make compromises which adversely affect general public interest
and the related purposes of the proposal. But within those limits, we will wherever reasonably possible make changes reflecting the wishes of individuals or groups.

This kind of an introduction opens the way to progress with a minimum of pain.

**AFTER THE HEARING**

During the hearing, area and intensity of remaining controversy should have become clearly identified. To get the proposal adopted, a few minor changes might suffice. But adoption of the proposal is not enough. If it leaves a substantial residue of fermenting resentment and opposition, trouble may break out in unexpected places later. With a few such marginal victories, the ultimate planning battle may be lost as the defeated from each skirmish band together to make up a formidable force.

The objective should be to achieve maximum consensus and support and minimum opposition when the measure is finally adopted -- without giving concessions adverse to public interest. The hearing has indicated the areas of disagreement. The next question is how to proceed.

A key device is the written response to suggestions for change. This is educational for all concerned. It is also an excellent medium for gaining support, for reaching consensus, or at least for reducing opposition.

There are three ways which should be acceptable to the planner for reducing or eliminating differences of opinion:

1. Agree to the suggested change if it does not adversely affect public goals.

2. Compromise to the maximum extent possible without damaging public interest.

3. Convince the person making the suggestion that there is solid reason for leaving the provision in the form in which it is stated.

The planner will probably be called upon to prepare the drafts of responses (or to make the responses). In doing so, he will normally have a tendency, which he should restrain, to proceed in reverse order on the approaches above: first, to defend the provisions as written; second, to compromise; and finally, as a reluctant last resort, to go all the way. This may bolster his ego, but it is unlikely to accomplish the main objective -- to reduce friction as much as possible without losing public ground. Two extremes will not profit from this exercise -- the experienced planner who has learned already and the stupid planner who won't learn.

The operation requires sympathetic appraisal of another person's position, reexamination of the public purposes set forth as premises, reexamination of the provision as written, comparison of the alternative suggested to see whether it would serve the public equally well (in case of ties, the alternative should win), preparation of a compromise provision if one seems indicated, or preparation of a convincing argument for holding the line if that seems to be the only course (and only if that seems to be the only course).
Thus the planner rethinks the position and drafts a concise but carefully reasoned response to the suggestion. If it is a matter to go to the commission before release, the draft would then go to them for their discussion and action. This should help to inform and educate the members, and it is entirely possible that their reaction will further educate the planner.

After planning commission approval, the response transmitted to the person suggesting change should eliminate or at least reduce his objections, and might convert him to a position of active support.

Copies of responses should also go to the governing body, which may in time take action to adopt, adopt with change, or reject the proposal. This builds up a file which members should find very useful if the legislative body holds hearings of its own or if members are approached individually concerning specific items.

Thus the written response to suggestion for change is used to sharpen the thinking of the planner, to educate the planning commission, to reduce the area of conflict as much as possible, to assure the person offering the suggestion that he has been given full consideration, to convince the legislative body that the staff and commission are giving proper weight to the opinions of the voters, and to provide the legislative body with reasoned reactions to issues which have been raised and may be raised again.

**SUMMARY**

1. Before a proposal is presented for public reaction, it should be logical and expressed in clear language. (Before dismissing this as a superfluous truism, look at a reasonable sample of proposals being presented.)

2. There is a difference between passive public consent and active public opinion. At the hearing, it should be possible to determine the degree to which a proposal falls outside the range of passive consent and into the area of conflicting opinion.

3. The planner's job is to enlarge the role of logic in public affairs, even though there is an increasing tendency toward nonlogic in the formation of public opinion.

4. The hearing is a seminar, not a kindergarten. The public should be given every opportunity to come prepared.

5. Opponents will come without special prompting. Proponents may need to be stimulated. The planner may have to take an active part in the stimulation.

6. In addition to determining the extent to which a proposal is controversial, the hearing is a preliminary step toward diminishing the extent of the controversy. It would be well to begin it by announcing its purpose of possible improvement of a draft, and to ask for specific suggestions as to how its improvement might best be accomplished. Detailed suggestions are more likely to be thought through carefully than is generalized comment.
7. A major opportunity for reducing the area of conflict comes after the
hearing. The written response to each suggestion is highly recommended.
To the maximum extent possible without adverse effects on the public in-
terest, the suggestions, or compromises in the direction of the sugges-
tions, should be accepted. If no compromise can be made without endan-
gering legitimate public objectives, there should be clear and convincing
arguments as to why this is so.

8. In addition to reducing the area of adverse opinion, increasing consensus,
and building positive public support, the device of the written response
disciplines the planner, educates the planning commission, and provides
the governing body with a file indicating what questions have been raised
and giving reasoned answers. This should encourage the application of
logic at the legislative level.