

Informed Decisions A Guide to Gathering Facts and Evidence

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Today's Speakers



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Spain



Martha Mason Semmes, AICP, Town of
Purcellville, Virginia



Eric Damian Kelly, FAICP, Ball State
University and Duncan Associates



Carolyn Torma, American Planning
Association

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The Site Visit

How should the site visit be conducted?



Martha Mason Semmes:

- Collect facts that cannot be easily determined from other sources; visualize development
- Provide notice
- Property owner, applicant, staff
- Staff take notes and provide a written summary at the next meeting
- No decisions can be made at site visit

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Any concerns about staff making recommendations?



- Prefer staff to make alternate recommendations
- Staff provide analysis of various recommendations
- Discuss possible conditions

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What facts and evidence should be gathered when there is no staff?



- Consider increasing fees to pay a planner on retainer
- Must have someone verify what's in the application
- Helpful to have planner and attorney create a checklist

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What must the commission consider?



- Do not consider who is applying, who is opposed or in support, how many support or oppose
- Do not rely on information outside the record
- Get staff to disclose information
- Consider the comprehensive plan
- Deal with every criteria for the decision

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Testimony in Meetings and Hearings

What constitutes competent substantial evidence?

David Theriaque:

- "Sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached."
- Testimony from:
 - Expert witness: Experts in their area of expertise
 - Fact witness: Lay person with personal knowledge

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Testimony in Meetings and Hearings

How can commissioners sort out irrelevant testimony?

Martha Mason Semmes:

- Chair can remind commissioners of criteria for evaluating applications
- Checklists are useful to review in meeting

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Linking to the Plan

What about consistency with the plan?

Eric Kelly:

- Consider the plan in every decision
- Not following the plan? Explain the deviation in the record
- Some states require conformity with the plan

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How are courts looking for the connection to the plan?



- FL: must comply with comprehensive plan
- Statutes can be more restrictive than the plan

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How can commissions approach findings and official records?



- Staff report summary includes findings and alternative draft motions as a starting point
- For zoning boards, motion must include each specific finding
- Applicant deserves more than “no”; commission to explain decision
- Helps create defensible public record

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Does the attorney need to draft the motion?



- Motion should come from the floor
- Have a checklist to shape the motion
- Focus on the contested issues
- Listen to both sides, but the evidence resolves the problem

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Preparing the Record

Advice for preparing a proper record for defensible decisions?



- Controversial meetings:
 - Staff meet with attorney to prepare
 - Have attorney draft the findings and attend the meeting
- Everything presented must be introduced into the record and kept
- Courts only look at the written record; supporting materials must be described

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Preparing the Record

What about long, technical reports?



- Planning director can summarize
- Call attention to pertinent passages and read important information in oral testimony
- Allow time to read long documents

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Preparing the Record

Adjourn a meeting before a decision has been reached?



- No; option to continue discussion to later meeting
- Statutory deadlines for action
- Appropriate when:
 - Additional research needed
 - New information needs more deliberation
 - Insufficient time to hear all
- Executive session in certain circumstances

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What about executive sessions?



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David A. Theriaque



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