



City of Rockville

MEMORANDUM

April 19, 2007

TO: Planning Commission

FROM: Jim Wasilak, AICP, Chief of Planning *RJW*

SUBJECT: Boards and Commissions Report and Legal Issues

Attached is a summary of the Mayor and Council's recent discussion and decisions regarding Boards and Commissions, as well as a summary of pertinent Legal Issues related to Boards and Commissions. Please review these for a brief discussion as part of New Business.

/rjw



MAYOR AND COUNCIL AGENDA

NO.

DEPT.: City Clerk's Office

DATE PREPARED: 2/27/07

STAFF CONTACT: Claire Funkhouser

FOR MEETING OF: 3/5/07

SUBJECT: Boards and Commission Report

RECOMMENDATION: Discuss and accept staff's recommendations regarding the City's Board and Commissions. The recommendations are grouped according to areas of questions or concern defined by the Mayor and Council. The recommendations are as follows:

Interaction and Communication between the Boards and Commissions and the Mayor and Council:

Recommendation #1

- Recommend that the Mayor and Council fully utilize the existing the Mayor and Council liaison system by attending at least one meeting every six months for those groups that meet monthly and at least once per year for groups that meet less frequently; also, convene a periodic meeting between the Mayor and Council liaison, the Chair of the Board or Commission, and the staff liaison.

Approved – City Clerk's Office to schedule meetings for Mayor and Council, Chairs and liaisons.

Recommendation #2

- Recommend expanded use of the expertise of the members of Boards and Commissions for input into the development of information provided to the Mayor and Council for meeting preparation by 1) bringing in the members of the respective Board or Commission to provide input at Mayor and Council meetings when appropriate (Examples: Cultural Arts Commission on art for the Town Square project; Traffic and Transportation Commission on intersection improvements needed at Route 28 and Veirs Mill Road; Planning Commission on preliminary development plans); and 2) including information from the respective Board or Commission regarding an agenda topic through staff reports, memos, etc. and highlighting it on the agenda cover sheet in the area marked, "Board or Commission Review."

Approved

Recommendation #3

- Recommend reinstatement of a standing Mayor and Council agenda item regarding Boards and Commissions during which the Mayor and Council can share information about the groups' activities

Approved – Agenda item added on March 12. Staff to provide items of note, including milestones achieved, special events, etc.

Legal Issues

1. Enabling authority

The legal authority for various boards, commissions, and committees originates from different sources. The Charter of Rockville specifies that the City will have a Board of Election Supervisors. Federal and State Law authorize the Rockville Housing Authority. State law authorizes the creation of the Planning Commission, Board of Appeals, and the Historic District Commission. Other boards, commissions and committees were established by Mayor and Council action, either in the form of Ordinance or Resolution.

2. Open Meetings Law (Sunshine Law)

The Sunshine Law requires open sessions whenever a public body carries on an advisory function, legislative function, quasi-legislative function or a quasi-judicial function involving land use decisions.

It also allows meetings to be closed but only for one or more of fourteen specifically enumerated purposes, and discussions during the closed meeting must be limited to those purposes.

3. Rules of Procedure

Generally, those boards and commissions which have quasi-judicial functions have adopted rules of procedure for conducting hearings.

Some boards and commissions have rules of procedure regarding the performance of other functions. If a board, commission or committee has not adopted special rules of procedure, normally, Roberts Rules of Order will be followed.

4. Ex Parte Communication

Ex parte communication is any communication that is presented to any member of a board or commission outside the record of the hearing. Ex parte communications are improper in a quasi-judicial proceeding as they do not provide the opposing party with the opportunity to hear, respond to, or dispute the communication being made. The term "ex parte" is defined by Black's Law Dictionary as "One side only; by or for one party; done for, in behalf of, or on the application of, one party only."

These types of communications can be delivered in person orally or by telephone call, personal contact, correspondence directed to a single member or any other type of communication outside of the record.

If you are contacted by someone who wishes to discuss a pending application which is the subject of a quasi-judicial hearing, you could respectfully advise the person that you appreciate their interest in the project but in order to permit you to consider their comments, as well as to permit other members of the board or commission to consider their comments, they should either appear and testify at the public hearing or submit their comments in writing, so that all members of the board or commission and other interested persons will have the benefit of and access to that information.

For the purposes of quasi-judicial acts in which a member inadvertently receives ex parte communication, the board/commission member should follow this procedure. The member should 1) either recuse himself/herself from acting on the application; or 2) at the public hearing in which all affected parties are present, disclose the information that was given to him/her, indicate that he/she has not utilized or formed an opinion with that information, and allow each side to refute that information including, if necessary, and requested by an adverse party, the granting of a continuance if it is in the best interests of all; or 3) if the information is disclosed after the public hearing has been held, and if the member feels he/she can properly sit on the case, that member should put in writing the information which was disclosed to him/her and submit it in the record of the proceedings and indicate that he/she will not consider it in reaching a decision or provide the information to all members of the board as well as all parties who appeared at the public hearing and provide to the adverse parties with a period of time (e.g. two weeks) in which to respond to that information.

5. Ethics/Conflicts of Interest (State Ethics Law, not City Ethics Law, applies to RHA)

Chapter 16 of the Rockville City Code entitled "Public Ethics" declares certain situations to constitute a conflict of interest. That law prohibits board/commission members from:

A. participating in any proceeding in which the Commission member (or the member's spouse, parents, children or business associates) has a interest, or the outcome of which would directly and economically impact an interest of the member, distinct from the public at large. A board/commission member with such a conflict must state, on the record, the nature and extent of the interest and refrain from participating in the proceedings;

B. assisting or representing the private interests of another where the board/commission member has any official involvement with respect to the determination of the private interest;

C. assisting or representing private interests in any action or proceeding against the interests of the City in any litigation in which the City is a party other than personal injury cases involving the City, except that a board/commission member upon disclosing his or her interest and providing evidence of no official involvement to the proper authority, may represent a parent, spouse, child, ward, or other person for whom he is a personal fiduciary;

D. assisting or representing the private interests of another for contingent compensation before any agency of the City;

E. holding employment with, or having a financial interest in, any entity subject to his or her authority or that of the board/commission, except when such interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict. A board/commission member may not hold any other employment relationship which would impair his or her impartiality or independence of judgment. These prohibitions do not apply to a board/commission member in regard to a financial interest or employment held at the time of appointment, provided it is publicly disclosed to the appointing authority and the City Attorney.

A former board/commission member may not assist or represent another party in a case, contract, or other matter involving the city if that matter is one in which he/she significantly participated as an official or employee.

F. intentionally using the prestige of his/her office for his/her own private gain or that of another. This does not prohibit the performance of usual and customary constituent services.

6. Liability.

As a member of a City board/commission, you are required to carry out your duties in an impartial and unbiased manner. There will be times, however, that in acting in an impartial and unbiased manner, your actions may be determined to be arbitrary by the courts. In this regard, Maryland has always held that the remedy is having your decision reversed.

Chapter 2 of the Rockville City Code entitled "Administration," provides for the defense and indemnification of public officials and employees. That Chapter indicates that if the City Attorney's office finds and determines that a public official has acted within the scope of his/her employment and that the act or omission was neither malicious or grossly negligent, the City will defend the public official and indemnify him/her for all losses.

7. Legal impact of decisions.

As previously noted, board/commission decisions in quasi-judicial matters must be based on the evidence of record and no board/commission member should rely on information that is not in the record.

Quasi-judicial board/commission decisions are subject to review by the Circuit Court for Montgomery County upon petition by an aggrieved party. In such a case, the fact finding of the board/commission is given great deference. The case is not tried anew, and the Circuit Court judge may not substitute his or her judgment for that of the board/commission, even if the judge would have reached a different conclusion based on the evidence presented.

A decision may be reversed, however, if it is not supported by sufficient evidence of record; in such a case the decision is said to be "arbitrary and capricious." A decision is supported by sufficient evidence if a reasoning mind could have reached the factual conclusion reached by the administrative body, even if there is contrary evidence which would support a contrary finding.

In quasi-judicial cases, decisions which are not appealed or which are upheld on appeal are binding on the parties and may provide guidance to the board or commission in deciding future cases.