

From: Legal Services Department <Legal@memun.org>
To: "Maureen O'Meara" <maureen.omeara@capeelizabeth.org>
Subject: Cape Elizabeth - Public comments

Maureen,

I am writing to confirm the opinion I gave you by telephone today.

I understand that the Planning Board is considering revising its rules to allow more public comment at its meetings. I also understand that the Board routinely holds informal "workshops" at which potential applicants may present basic sketches or ideas of their plans and receive very broad guidance from the Board regarding the potential issues that might arise, procedures that will be followed, and materials that must be submitted. The proposal is to begin allowing a period of public comment at these workshops.

I am concerned that opening the workshops up to public comment may result, on some occasions, in the discussion veering toward substantive elements of the application. For instance, a member of the public might be an abutter who is concerned about traffic noise, screening or runoff, and may ask questions related to those facets of the project. The applicant might then feel compelled to respond to the questions and the Board might also find itself discussing these more substantive elements of the application. It is of course necessary to avoid these types of topics, because once substantive review of an application begins, certain deadlines under the ordinance are triggered and the application is then protected from any retroactively applied ordinances.

While, in theory, a very careful board could avoid these triggers, in practice, it may be very difficult to do so. As such, if public

comment is to be allowed, I would suggest restricting the comment period to the last 5-10 minutes of the meeting, after the Board has completed its business with the applicant. The Board should make the public aware that neither the Board nor the applicant is going to be responding to any of the comments made. If procedural questions are asked, then the Chair may speak on behalf of the board to respond. I think this is the only way to ensure that discussion is kept within safe territories and that the established review process under the ordinance is not offended.

You also asked whether the Planning Board may place a deadline for submission of written comments that are to be presented at its meetings. I understand that sometimes these comments come in just before a meeting and that this is often burdensome. Since the Freedom of Access Act only requires that the meeting be made open for attendance by the public, and does not specifically allow submission of written comments, I see no problem with establishing a policy that (for instance) requires comments to be submitted by noon in order to be read at the evening's meeting. Many state agencies have similar policies, which to my knowledge have never been challenged.

I hope this is of help. Please contact me if you have any further questions.

Best regards,
Kristin Collins

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