How Does an Appropriate Municipal Panel (AMP) Reopen a Hearing for Development Review?

There are several reasons why an AMP (a development review board, a board of adjustment, or a planning commission with review authority) may reopen a hearing for development review after it has been closed. Maybe an interested person has additional evidence to submit that is crucial to the final disposition of an application, or maybe an AMP, after orally approving an application, realized that the information it had relied upon was inaccurate or incomplete and that it needs to receive new evidence and reconsider its decision. Whatever the reason, an AMP can reopen a hearing, but in order to do so it will first need to rewarn it.

Ordinarily, an AMP could continue a hearing simply by adjourning to a date and place certain. "Any hearing held under this section may be adjourned by the appropriate municipal panel from time to time; provided, however; that the date and place of the adjourned hearing shall be announced at the hearing." 24 V.S.A. § 4468. Making this announcement during the course of an open hearing obviates the need to again notify the public and all potentially interested parties of the hearing date and place. In contrast, when a hearing is closed, any subsequent hearing will be considered a new hearing. Consequently, one of the necessary prerequisites to reopening a hearing is that it must be warned anew. This means providing the public and interested persons with proper notice of the hearing all over again.

Other conditions must be met before reopening a hearing. First, a hearing can only be reopened prior to the expiration of the time for appeal of the AMP's decision. The Vermont Environmental Court has allowed AMPs to reopen hearings even after a written decision had been rendered on the basis of judicial and litigant economy. "It is much better practice to avoid unnecessary remands by allowing a board, which realizes that it has acted on incomplete or inadequate information, or is informed of previously-unavailable evidence, to reopen the initial proceeding if such a procedure may result in a sounder decision. ..." Second, an AMP must vote to reopen a hearing, though it need not provide notice of the meeting at which it considers whether to reopen. Once reopened, the AMP must also allow all interested persons to present any additional evidence and make whatever arguments they may have, just as in the first hearing. So long as these conditions are met, "there is no prejudice either to parties favoring the original decision, nor to parties intending to appeal the original decision." *In re: Appeal of Janet C. Dunn, et al.*, Docket No. 2-1-98 Vtec (Vt. Envtl. Ct., Mar. 8, 1999)

One complicating factor to reopening a hearing is the tolling of the so-called "deemed approval" period. AMPs must render a written decision (minutes may suffice) within 45 days from the close of a hearing or else face the specter of an applicant/appellant asserting the remedy of deemed approval in Environmental Court. 24 V.S.A. § 4464(b)(1) When a hearing is closed, an AMP may have to obtain the applicant/appellant's consent in writing to waive the tolling of the 45-day deadline before moving forward with another hearing. This consent will stop the deemed approval clock from ticking until the close of the subsequent hearing, when the clock will tick anew. Such consent will be unnecessary if the AMP can still issue its decision within 45 days from the date it originally closed the hearing.

There are, of course, some simple measures an AMP can take to avoid reopening a hearing altogether. For example, an AMP could always continue a hearing to a date and place certain as a precautionary measure to determine whether additional evidence is warranted. Similarly, an AMP could adjourn for a shorter period of time, i.e. "recess" the proceedings. "The appropriate municipal panel may recess the proceedings on any application pending submission of additional information." 24 V.S.A. § 4464(b)(1). Finally, an AMP could also vote to enter into deliberative session. An exemption to Vermont's Open Meeting Law, deliberative session allows AMPs to weigh, examine, and discuss the reasons for and against approving a land use application, but "expressly excludes the taking of evidence and the arguments of parties." 1 V.S.A. § 310(1). Whichever option it employs, an AMP should make clear that it will adjourn, recess, or enter into deliberative session for the purpose of determining whether additional evidence is needed, after which time it should move to formally close the hearing.

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