



September 26, 2023

Re: Open letter to parties appearing before the Permit and License Appeal Board

This letter is written to provide useful information to parties appearing before the Board and efficiently put on their best arguments. This letter represents only suggestions and recommendations from my tenure on the Board. Nothing in this letter should be construed as official Board policy. And nothing in this letter is intended to, or shall, affect any requirement of any law or ordinance or vary the Board's rules set by the City Council. While parties to proceedings before the Board are encouraged to read this letter and take its suggestions into account, proceedings are governed by, and conducted in accordance with the applicable City of Dallas ordinances.

Focus on ordinance requirements.

City ordinances identify the types of decisions that the Board may review, and they specify the criteria on which the Board must base its decisions. While Board members may be receptive to arguments regarding the propriety or application of city ordinances, their decisions are guided by the decision parameters the City Council has created for the Board. Parties are well served to familiarize themselves with the specific criteria on which the Board must base its decision and to focus their evidence and arguments on those criteria.

For example, while the Board members may be sympathetic to arguments of unfairness or illegality in an ordinance, or the City's application of it, the Board does not have the authority to decide on that basis. If a party feels that it is necessary to raise such arguments in order to make a record or preserve them for later review, it may of course do so, but such arguments are unlikely to affect the result with the Board.

It is also important to focus on the relevant facts. Some decisions of the Board will be based on what *has* happened, and some are based on what *will* happen. For example, if the relevant ordinance is backward-looking, promises of future action, or descriptions of actions taken after the relevant time, will not sway a decision.

Many of the matters that come before the Board involve questions of neighborhood impact. One source of evidence of neighborhood impact is from neighbors, but the Board rarely hears from them. Neighbors can be heard from in various ways, including statements offered by parties into evidence, neighbors brought as witnesses to be questioned by the parties and Board Members, and neighbors who choose to speak during the public testimony period.

Clearly outline the issues.

Occasionally, the parties agree on some, or all, of the dispositive issues. In such cases, the parties are encouraged to discuss those issues ahead of time and inform the Board in their filings or opening statements which issues are agreed to and which are disputed. While the party with the burden of proof must still meet it, it is helpful to the Board to know what is actually in dispute.

Along with knowing what is not in dispute, it is helpful to the Board to have an understanding of the issues—legal or factual—that the parties intend to argue, and especially their significance to the ultimate outcome. While the parties will have an opportunity to make a brief opening statement at the hearing, whether the issues are simple or complex, it is often easier to organize them in writing. To that end, the parties may include in their exhibits a letter brief outlining their arguments.

Because the Texas Rules of Evidence do not apply and evidence is admitted into the record without testimony, parties are often tempted to put into evidence thick packages of information without context. While a letter brief may put the evidence in context, it can also be helpful for parties to include a descriptive index of their evidence, including a concise explanation of each exhibit's significance to the relevant issues.

Be familiar with Board procedures.

All Board meetings are streamed live on the City of Dallas website, and recordings of prior meetings are available. Parties who have not previously appeared before the Board may benefit from viewing prior hearings on the same type of appeal.

Procedurally, most hearings follow the same general format: Each party may make a brief opening statement, beginning with the appellant. The best opening statements summarize the information the party will present to the Board. After the opening statements, the parties will present their argument, either narratively or through questioning of witnesses. Parties may also use demonstratives and exhibits.

After the party representative has presented its evidence and witnesses, they may be questioned by the other side's representative. The Board then proceeds with the Board Members questioning the party and its witnesses.

Use available time wisely.

It is the Board Chair's practice to ask the parties how much time they would like to make their presentations; however, more than 30 minutes per side is rarely granted.

Each party's time allotment includes the time a party spends presenting its evidence, questioning its witnesses, and questioning the other side's witnesses. It does not include the brief opening and closing statements or time spent answering Board Member questions. It is the Chair's experience that the time limits granted are almost always sufficient for a prepared party to present its case when focusing on the relevant facts and argument.

Each Board Member, if he or she chooses, may question the party and its witnesses in (1) a three-minute first round and then (2) a two-minute second round. Each Board Member is allowed to ask questions in the first round, prior to starting the second round.

Any of these time limits may be extended by unanimous consent from the Board, but in the Board's historical practice, rarely has the Board needed or granted extended time. Parties are therefore advised to be prepared to succinctly present their cases in the allotted initial time and not assume they will be allowed more.

While the Chair will track parties' use of time, and provide time remaining on request, parties should keep track of the time they need and time remaining.

Use technology effectively.

City Hall is open for in-person appearances, and the Chair, some Board Members, and Board staff will be present, in person, at City Hall for all meetings. Current rules do allow parties to appear remotely via video, but they do so at their own risk.

Participants who choose to appear by video conference are advised to take advantage of the opportunity to test their connection prior to the hearing day, and to connect prior to the scheduled hearing time.

All active participants are required by law to be visible, so they should be in a place, and have the technology available, to appear on camera. And for them to be effective, the Board must be able to clearly hear and understand representatives and witnesses. Parties are responsible for ensuring this is the case. A party who chooses to appear by video conference, but fails to appear because of technology issues not caused by City equipment or facilities, will be treated the same as a party who fails to appear in person. And a party unable to present witnesses because the witnesses are unable to connect via video conference will proceed without those witnesses.

Additionally, the parties should confirm with the City Secretary's office the receipt and availability to the Board of any written or documented evidence that is sent to the City of Dallas and that intend to use in the hearing. Evidence sent in by the parties will be available on the Board website prior to hearings, and parties should verify that all evidence appears as expected.

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The volunteer Members of the Permit and License Appeal Board and all of the associated City of Dallas staff are incredibly conscientious and endeavor to always give parties a complete and fair opportunity to be heard on the issues before the Board. But the Board's ability to arrive at the correct result depends entirely on the parties' presentations. It is my hope that the advice set out above will help every party put its best foot forward and effectively present its case.

Sincerely,

/s/ Benjamin Setnick

Benjamin Setnick, Chair
Permit & License Appeal Board