

**Local Government Section
MCLE Meeting
DuPage Judicial Center – Attorney Resource Center
6/13/18**

11:45 AM – Noon Welcome/Introductions
Sean Conway, Section Vice Chair

Noon – 1:00 PM Program

Navigating the Municipal Hearing Process
Kevin M. Coyne – Momkus McCluskey LLC

*Concentrating in real estate law and licensed to practice in Illinois and Iowa, **Kevin M. Coyne** represents clients in the acquisition of a wide range of commercial real estate properties and businesses, including national franchises, restaurants and bars, and professional practices. Kevin also represents both landlords and tenants in retail, industrial, office, and residential leasing matters. He received his B.B.A from the University of Iowa College of Business and J.D. from DePaul University College of Law.*

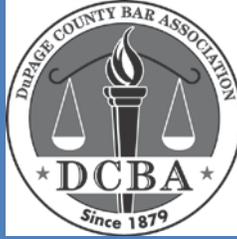
What you will learn by attending this presentation:

1. An overview of the municipal hearing process
2. Practical points on hearing presentations
3. How to deal with local politics and stakeholder groups
4. Ethical considerations

Next Meeting: Fall 2018

DCBA Events: 6/19/18 – 11th Hour PRMCLE Seminar, Part 2: earn up to 3
PRMCLE credits in one afternoon

6/19/18 – Lawyers Lending a Hand – Northern Illinois Food Bank



6/21/18 - Happy Hour at Granite City in Naperville

7/19/18 - Happy Hour at Main Event in Warrenville

7/31/18 - Lawyers Lending a Hand - PADS in Winfield

View & Print All CLE Certificates through the DCBA Website:

Manage Profile -> Professional Development (under content & features) and choose the icon to the left of each meeting to print your certificate directly or choose to have them emailed to you to save to your computer (you MUST be logged in to view this feature)

DCBA OnDemand CLE is Now Powered by IICLE The Illinois Institute for Continuing Legal Education (IICLE®) and the DuPage County Bar Association (DCBA) are excited to offer a new IICLE®Share collaboration to provide DCBA members a high quality and reliable online learning experience. Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) on the DCBA website under "Legal Community" → OnDemand CLE → Online CLE Catalog



1001 Warrenville Road
Suite 500
Lisle, IL 60532
(630) 434-0400

“Navigating the Municipal Hearing Process”

Presented by
Kevin M. Coyne



About Kevin Coyne

Kevin Coyne represents clients in the acquisition of a wide range of commercial real estate properties and businesses, including national franchises, restaurants and bars, and professional practices. Kevin also represents clients in retail, industrial and office leasing matters. Kevin's practice also includes land use and permitting and has appeared on behalf of clients in numerous municipalities, including the City of Chicago.

Education

- The John Marshall Law School, LL.M. (Real Estate Law), Chicago, Illinois
- DePaul University College of Law, Chicago, Illinois
- The University of Iowa College of Business

Municipal Experience

- Naperville City Council (2015 to Present)
- Naperville Planning and Zoning Commission (2010-2015)
- DuPage County Stormwater Commission (2017-Present)



PURPOSE OF PRESENTATION

- **Broad overview of Municipal Hearing Process**
- **Practical Points when dealing with staff and presenting at Public Meeting**
- **Dealing with local politics**
- **Broad overview of Ethical Considerations**

PARTICIPATION IS ENCOURAGED !



UNDERSTANDING THE LANDSCAPE OF THE COMMUNITY

- Overview
 - 6,963 local taxing bodies in Illinois
 - Each with their own customs and procedures
- What is THIS Community's Approval Process?
- What are THIS community's Pressure Points?
- Talk to Staff – Find out what approvals are needed before client buys or leases
- Meet with neighbors, if possible, elected officials – Early On!
- Research local rules governing time, place, procedures of public participation



Preparing the Submittal

Prepare the Submittal – Use local forms. Check Public Records for similar filings, meeting minutes, video of meetings.

Goal is to pinpoint what this issues are as early as possible.



Dealing with Staff

- Communicate early and often with staff
- Are they supportive of your application?
- How is their opinion or finding communicated to the Board?



MAYOR-MANAGED COMMUNITY vs. MANAGER-MANAGED COMMUNITY

- **Who is driving the bus?**
- **Watch tape of the Board in action- IMPORTANT**



WHO ARE THE STAKEHOLDERS?

- **Start talking to people early – Avoid surprises midstream**
- **Find Allies in the community or neighborhood**
- **Be Patient with Residents (and Elected Officials)**
- **Be Honest At all Times**
- **Be Aware of Political Pressure Points**

“All politics are local and are different everywhere”



PUBLIC NOTICE

- **Public Notice Complied with?**
 - **Both mail and posted sign**
 - **Keep record**
 - **Are certified receipts required?**
 - **What is Legally Required vs. What is Politically Smart?**

It is very common for neighbors to appear claiming they were not given reasonable notice of the hearing.



Home Rule vs. Non-Home Rule Distinctions

- **May effect how many votes you need and/or what kind of latitude the Board may have.**
- **May make the Plan Commission vote or Board of Zoning Appeals vote more meaningful.**



DUE PROCESS

- **The Petitioner and Neighbors are entitled to Due Process**
- **Substantive Due Process:** “...no person shall be... deprived of life, liberty or **property** without **due process** of law...”
- **Procedural Due Process:** the process must be fair and the municipality must be following its own reasonably drawn rules.
- **Common claim:** Taking



SOCIAL MEDIA

- What are residents saying about your project?
- Facebook, Next Door, Newspaper Blogs
- Investigating these pages may help avoid surprises at the hearing
- Don't underestimate the amount of disruption that just 1-2 objectors can create for your project



The Hearing

- **It's Like Court but Its Not Court! Be relatable to the board and constituents**
 - Know your Audience – what are qualifications and background of people on the Board. Who are their supporters?
 - Know layout at hearing room
 - Monitor?
 - Televised?
 - How big is room?
 - Paper copies or Power Point?
- Familiarity with Local Practice – Watch prior meetings if available
- Agenda
 - Make sure you're on it?
 - What else is on that night?
 - How many votes do you need?
- Local Politics – is your proposal controversial? Don't find out the night of the hearing.



Testimony

- Petitioner – How much time do you get? Is presentation even warranted?
- Cross Examination (Klaeren) – What are the rules? Check with local staff.
- When giving testimony on items such as traffic impact, stormwater, environmental – experts are the most the most credible – Particularly if those experts are local
- Be honest, relatable, speak to issues that local elected officials will care about.



TYPES of EVIDENCE

- Surveys – Professionally done
- Studies – Parking, Traffic, Sound, Environmental, Impact
- Photos
- Witnesses - Speak to Impact on Surrounding Properties – Know what's around Subject Property
- Address known complaints from others as to petition
- Liberally include evidence in submission but do not be long winded at the hearing.

“You cannot supplement the record after the f



Presenting Evidence

- **Address the legal standards at issue in your requests**
- **Make sure your Submission is all inclusive of the evidence – CANNOT ADD TO THE RECORD AFTER THE FACT**
- **Don't Go Too Long**
- **Raise Public Policy Benefits of Your Request**



QUASI-JUDICIAL vs. LEGISLATIVE REQUESTS

QUASI-JUDICIAL Legal findings are being determined by the board (example: variances standards have been met). Formal, court-like, rules should be followed.

LEGISLATIVE REQUESTS Changes to policy are being requested (example a new ordinance is being proposed, or city policy change is being requested).

The difference between the two can be slim but could make the difference between certain forms of communication arguably being improper (i.e. ex parte communication). Lobbying and/or direct contact with the officials raise less questions when the issue at hand is legislative.



Challenging Petitions

- Comprehensive Plan – Does this cause conflict?
- Find incorrect information shown on Petition
- Reduce credibility of Petitioner – they've lied, refused to meet with neighbors
- Incomplete (misleading) information?
- Contradict Expert Opinion – Professionals Disagree
- Get a crowd there – Political Pressure
- Local respected voices in Community oppose
- Time Limits! Know how much time you have to speak – Might be very short
- Hot Buttons –
 - Parking
 - Traffic
 - Value Impact
 - Views
 - Noise
 - Character of Neighborhood
 - Hazards to Children or Pedestrians



THE ISSUE OF STANDING

- Neighbors
- Civic Groups
- Different than legal standing to file suit
- At hearings, usually anyone can speak



IMPORTANT COURT CASES

- Klaeren
- Euclid
- LaSalle



Klaeren v. Village of Lisle Illinois Supreme Court (2002)

- Important case that anyone handling zoning cases should be familiar with. Numerous aspects of the municipal hearing process were at issue in this case.
- Who can cross examine, how cross examining can be regulated, how testimony is given, standing, speaker time limits, general hearing rules.
- Meijer store wanted to come to Lisle.
- Large number of residents were very upset and did not want the store.
- As large numbers of residents were coming to the hearings, the mayor set 2 minute time limits on all the speakers, impromptu rules on speakers and cross-examination.
- **Conclusion: Municipality must set reasonable guidelines for hearings and cross examining. Residents have the right to be heard and have the right to Due Process.**
- **Note: Majority of the Lisle Village board was voted out of office following their decision to approve store.**



Village of Euclid v. Ambler Realty U.S. Supreme Court (1926)

- Real Estate company (Ambler Realty) owned 68 acres of land that it hoped to develop for industrial purposes.
- Village of Euclid zoned the property into classes designed to avoid the parcels from changing the character of neighboring residential.
- Ambler filed suit alleging taking by the Village.
- Court held that municipality police power includes right to regulate real estate for the public welfare but the regulations cannot be irrational or arbitrary
- Term “Euclidean Zoning” still often used.



LaSalle Bank v. County of Cook Illinois Supreme Court (1957)

- This case set forth the “LaSalle Factors” still used today by many municipalities as a means of deciding zoning requests.
- Municipality should consider neighboring properties, impact on property value, impact on the general welfare, balance the benefit to public against the hardship to the landowner, public need for the proposed use.
- These tests are still referenced in many municipal packets today.



TYPES OF COMMON REQUEST

- Variance
- Conditional Use



VARIANCES

- Not Zoning Change
- Does existing ordinance create an undue hardship
- Unique Circumstances
- Use vs. Area
- Character variances of neighborhood
- Not Self-inflicted Harm
- Practical Difficulty

VERY SUBJECTIVE



CONDITIONAL USE

- Permitted Use vs. Conditional Use
- Ordinance outline which is needed to establish conditional use
- Character of Neighborhood important
- How will use affect the Neighborhood
- Are you going to harm neighboring properties value or uses?

VERY SUBJECTIVE



ARE THE ELECTED AUTHORITIES ELECTED TO A WARD OR ARE THEY ELECTED CITY-WIDE?

Can make a big difference when Board deliberates



ETHICAL CONSIDERATIONS

- Rule 4.2 Communication with Represented Persons
- Rule 4.3 Dealing with Unrepresented Persons
- Caution: Zoning cases can lead to many, many people being very upset
- Board is expected to be objective and unbiased
- Duty to Unrepresented Parties – Can't mislead
- Legislative vs. Quasi-Court – Lots of gray area?
- Are there even conflicting interests between Petitioner and City?



AFTER THE HEARING

- Review the Ordinance – Make sure it is correctly stated
- Thank staff and the board (win or lose)
- Be Aware of limitations on appeal – often just 90 days!



SUMMARY

- Determine what the issues are early by talking to staff and stakeholders
- Understand what evidence should be presented at your hearing and who should present it
- Determine to the extent possible whether or not your petition is controversial and do what you can to quiet that controversy
- Remember through out both Zoning and Politics are local – understand what is important to THIS and board and to THIS community.
- Speak to not just the legal standards, but also the public policy benefits of your project.



Questions



11th Hour PRMCLE Seminar

May 22, 2018 & June 19, 2018 at the Attorney Resource Center



Need additional PRMCLE credits before the reporting deadline? No Problem! Please join us on Tuesday, May 22 and/or Tuesday, June 19 at the Attorney Resource Center (3rd floor of the DuPage Judicial Center, 505 N. County Farm Rd.) for our 6th Annual Eleventh Hour Seminar. You can earn up to 6 TOTAL hours (3 hours each session) of PRMCLE credit.

Part 1 (Tuesday, May 22)

- 1:30 PM - 2:30 PM:** *Implicit Bias in the Courtroom*,
Ted A. Donner; Donner & Company Law Offices LLC
1 PRMCLE Credit (Diversity & Inclusion)
- 2:45 PM - 3:45 PM:** *Boys Club vs Girls Club – Does it Matter?*,
Danya Grunyk; Grunyk Family Law, Linda Strohschein; Strohschein Law Group, LLC, and Bob Boyd; The Stogsdill Law Firm, PC
1 PRMCLE Credit (Diversity & Inclusion)
- 4:00 PM - 5:00 PM:** *Recognizing, Understanding, and Referring a Colleague in Need*,
Linda Pieczynski; LAP Volunteer
1 PRMCLE Credit (Mental Health & Substance Abuse)

Part 2 (Tuesday, June 19)

- 1:30 PM - 2:30 PM:** *The Morality of Ethics: What Kind of Lawyer Are You?*
Wayne Brucar; Office of the Public Defender
1 PRMCLE Credit
- 2:45 PM - 3:45 PM:** *Connecting Lawyers, Inspiring Change: Advancing the Mission of Professionalism*,
Stephanie Villinski; Illinois Supreme Court Commission on Professionalism
.25 PRMCLE Credit (Diversity & Inclusion)/
.75 PRMCLE Credit
- 4:00 PM - 5:00 PM:** *Don't Panic! What to do When the 14 Day Letter Arrives from the ARDC*,
Jeffrey Corso; Cooney Corso & Moynihan, LLC
1 PRMCLE Credit

	Price Per Session (Select Sessions Above)	Full Program (6 Hours PRMCLE Credits)
Gov't/Legal Aid/New Lawyer (<7 years)	\$15 x # of Session(s) _____ = \$ _____	\$80
DCBA Member	\$20 x # of Session(s) _____ = \$ _____	\$100
Non-Member	\$30 x # of Session(s) _____ = \$ _____	\$180

No refunds given after May 18th for Session 1 and June 15th for Session 2

Name: _____ Total Due: \$ _____

I enclose my check for \$ _____ made payable to DCBA. Check #: _____

Please bill my Credit Card #: _____ CVV#: _____

Exp Date: _____ Signature: _____

Billing Address: _____ Phone #: _____

City: _____ State: _____ Zip Code: _____

Email address: _____

Mail your registration form to 126 S. County Farm Road, Wheaton, IL 60187 or fax to 630-653-7870
 If you have any questions, please contact Janine Komornick at 630-653-7779 or jkomornick@dcba.org.