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*ALSO ADMITTED IN THE
DISTRICT OF COLUMBIA

October 29, 2018

Email and Hand Delivery

County Council for Montgomery County
Stella B. Werner Council Office Building
100 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

Re: Proposed Amendment to OZAH Rule of Procedure
No. 4.2 e)

Dear President Riemer and Councilmembers:

This letter is transmitted to respond to the proposal to amend OZAH Rule 4.2 e) to give authority to the Hearing Examiner to *limit* “the amount of time given for each party’s case in chief, provided each side is given equal time.”

Initially, I suggest that the proposed rule is not clear. Under the proposed rule, must the applicant’s time equal the total time allotted to all opposition parties, or vis-a-versa? How is the designation of “party” limited? Are there only two sides, or can there be an applicant and many opposing parties, thus multiplying the applicant’s time? On what basis will the Hearing Examiner allocate time — prehearing statements, number of witnesses? Will witness testimony be cut-off when time exceeds the applicant’s/opposition’s allotted time of presentation?

As some of you are aware, a large portion of my practice is the representation of individuals, groups of individuals, and organizations in opposition to land use proposals which involve an OZAH hearing. From that perspective, as I explain below, the proposed rule will have a very serious impact on the ability of citizen opposition interests to adequately participate in OZAH hearings. I also am a former Hearing Examiner.

The authority to limit the time to present a party’s case fails to take into account a very important characteristic of citizen participation in the OZAH hearing process. Specifically, it is not unusual that an application subject to OZAH hearing will generate multiple disparate local community interests and concerns. That local community often has divergent interests and concerns in the zoning issues presented in the case. For

instance, it is not unusual that a specific individual or group of individuals will join together to retain legal representation and fund expert witnesses to respond to the case that is being presented by the applicant through its experts. Aside from such organized opposition, other individuals and even other groups often wish to participate in the OZAH hearing to present their issues. The foregoing creates a situation where the opposition consists of multiple disparate interests and by limiting the amount of time that all of those opposition interests have to present their views to the same amount of time as an applicant will work to the detriment of all opposition participants because disparate, different opposition interests, in the aggregate, will take more time for the presentation of *all* opposition information/evidence than that used by the applicant.

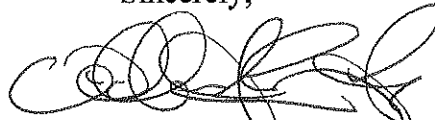
In addition, it also is not unusual that county-wide organizations may participate in an OZAH hearing. Such organizations are civic associations, umbrella civic organizations, specialized interests groups (*i.e.*, bicyclists, horse trail groups), as well as national organizations (*i.e.*, the Sierra Club). Such groups may not have the same issues as local citizenry, and their participation would limit the amount of time that local community interests would have to present their cases.

The words "equal time" really have no meaning when the issues may be quite different based on the perspectives and interests of multiple disparate, different participants in the OZAH hearing.

In actuality, under current OZAH Rule 4.2 the Hearing Examiner has the authority to control the hearing, including the presentation of testimony and evidence, and the amount of time being taken by a party or witness to present testimony/evidence. That is how it has worked well for about 50 years and the way the process works in a judicial forum. There is no problem with the amount of time taken by a party or witness to present testimony/evidence that the Hearing Examiner is not already able to address under the current rule.

The proposed rule will be detrimental to the citizens of Montgomery County. I am available to respond to any questions that councilmembers may have with regard to the concerns I raise, and I sincerely appreciate your consideration of my letter.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Chen, Jr.", with a stylized, cursive flourish.

William J. Chen, Jr.

WJC:mml

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