

Putting the Public in Public Hearings

The Iowa Code provides for public hearings on new rules, permit applications, and public projects. Public hearings provide citizens an opportunity to speak to the governmental agency and to provide input on the proposed rule, permit, or project. Public hearings are key to our democracy. In a true, fair and open, public hearing:

- The public is given notice about the hearing and its purpose several days before the hearing.
- The public hearings are scheduled so that they are at a time and location where most people can easily attend is key to keeping the public involved. If an issue has state-wide interest, several hearing sites should be provided so that people from across the state can travel to the hearing site.
- Enough information is provided so that the public has an opportunity to familiarize itself with the issue
- Background materials are posted on the web for easy access
- At the hearing itself, the public is seated
- A presenter, ideally a government employee, presents information about the proposed rule, project, or permit.
- The presenter will offer time for some clarifying questions from the audience.
- Then the public is offered an opportunity to provide comments publicly, before the assembly, while they are recorded or transcribed.
- Enough time is allotted so that everyone can speak.
- The best practice allows letters to be submitted for several days after the hearing. That way, additional information can be provided if someone thinks of something after listening to other comments. Furthermore, folks unable to attend the public hearing can be given an opportunity to comment.



A Sierra Club member is providing public comments. Photo by Pam Mackey Taylor.

The Iowa Chapter supports using these techniques for fair and open public hearings. Furthermore these practices allow members of the media to listen and to report on the comments offered by the public.

Yet, there has been a steady effort to deny the public access and participation and to stifle public comments. Iowans have a sense of fair play and know when they are being denied their rights. In some cases, members of the public are speaking out when the public hearings are being run in undemocratic ways. On occasion the public collectively will press for more public hearings. At times members of the public have requested that the public official conducting the hearing take questions from the public about the issue. Members of the public have even asked that the government official allow speakers to speak publicly rather than quietly into a tape recorder. Generally the public official complies with what the public is requesting.

In our Democracy, it is absolutely essential for the public to have fair, open, accessible public hearings.

Here's a summary of how some government agencies are conducting public hearings that are limiting the public input:

- One technique is to avoid public interaction by having the public review posters describing the project. Sometimes a public employee is standing near the posters and is answering questions or describing the content of the poster; other times, a contractor fills the role. The public is free to ask questions one-on-one. The public is often given a notecard, a half sheet of paper, or even a full-sized sheet of paper to use for providing written comments. However no public description is made of the project, no public question and answers are allowed, and no public comments are taken in front of all of the people who attend the public hearing. The Iowa Department of Transportation repeatedly used this technique in gathering public comments about the western leg of Highway 100.
- The information about a project is not made available to the public. It is not on the web. It is not available at the government office. The only way to know the details of the project is to come to the public hearing. For example, a contractor was hired to develop a master plan for Wanatee County Park (formerly Squaw Creek County Park) in Linn County that included several major projects, including ponds, parking, and Frisbee golf. Project details, posters, and other material were kept at the contractor's office. The posters and details were not even posted on the county website.
- At some public hearings, a facilitator announces that a member of the public should offer comments only if someone else has not already stated the idea. When that happens, counts of the number of folks offering a pro-project versus the anti-project are inappropriate. Yet afterwards, some board members may openly use counts of the number of people supporting each position, clearly a misstatement of the process. At that point, the public has no way to correct the misstatement.
- Another technique is to create a false dichotomy where an equal number of speakers are allowed on each side – pro and con. Although it may be fair from a raw number standpoint, it may not accurately reflect the level of support in favor or opposed to an issue. The Iowa Utilities Board used this technique when taking comments for the pipeline proposed by Dakota Access.

- Limiting the amount of time a person is allowed to speak to one or two minutes can severely impact the quality of comments. If a speaker is cut off before they have completed their comments, important information can be lost. On complex issues, one or two minutes simply may not be enough time. Although no one should be allowed to drone on for hours, it serves no one's best interests to cut short comments.
- Limiting the total time that is allocated to public comments is also a problem. If a large number of people appear for public comments when a short amount of time is allocated for public comments, then most likely most of the public will not be allowed to speak. When that happens, a second public hearing should be scheduled. Obviously it is difficult to predict the number of people interested in an issue and willing to participate in public comment. However, the public employees should have a sense about the level of public interest in a topic and schedule public comment time accordingly. When the media have been covering a topic for days or when large volumes of letters to the editor have been printed, that is a likely indication that there will be a larger turn-out.

Case Study: Blatant Effort to Restrain Public Comment

On December 16, 2015, the Iowa Department of Natural Resources (DNR) conducted a public hearing about a permit request from Dakota Access to build a pipeline across public land. Approximately 150 members of the public were seated in an auditorium, many of them Sierra Club members. Only 90 minutes was allowed for public comment. Two people at a time were brought to the front of the room, seated with their backs to the public, and speaking into tape recorders. As a person finished, a facilitator called out the next person's name over a microphone even though the other person was still speaking.

Members of the public spoke up, asking for one tape recorder and use of the microphone so everyone could hear. The DNR refused to oblige.

Unless the speaker turned around and shouted their comments, no one in the audience could hear the comments. Likewise, the numerous members of the media were unable to hear.

The media had been covering the pipeline for months. Consequently the DNR knew that the pipeline was controversial and likely to bring out large numbers of people on each side. The DNR even used the large auditorium for the public hearing. This was a blatant attempt by the DNR to limit public input, to deny the public's ability to hear what others were saying, and to restrict media access.



Photo by Neila Seaman

See "Editorial: Pipeline meeting infringed on freedom of speech", Des Moines Register, December 22, 2105