



Adirondack Park Agency

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Guide to APA Project Hearings

When is a project hearing necessary?

Project hearings are held infrequently and only at the direction of the APA Board. The APA Board may direct that a project hearing be held if it believes that:

1. A proposed project does not meet applicable legal standards for project approval;
2. The project could only be approved if it is significantly modified or conditioned; or
3. A hearing is necessary to obtain information necessary for the Board to make findings and determinations required by law or regulation.

No proposed project may be denied by APA without a hearing. If the APA Board requires a project hearing, it may also specify issues to be adjudicated at the hearing. The APA Board's decision to require a project hearing must be made within specific timeframes after APA staff determines that an application is complete for purposes of review.

What is a project hearing?

APA's rules for project hearings provide more detail on the project hearing process and can be found in Part 580 of Title 9 of New York's Official Compilation of Rules and Regulations (9 NYCRR).

Three phases. An APA project hearing may have three phases:

- A public information session to receive public comments.
- A pre-hearing conference to identify parties and define issues for the hearing.
- A hearing to adjudicate disputed issues.

A public information session may be held by APA depending on the level of public interest in a proposed project. A pre-hearing conference is also discretionary. The hearing is held to develop a record on significant issues related to the approvability of the proposed project. Project hearings provide the opportunity for parties to present evidence and argument on those issues before an impartial administrative law judge (ALJ). Evidence can be testimony, documents, photographs or other exhibits presented to the ALJ. The APA Board makes a final decision based on a project hearing record that includes the application, public comment and evidence presented at the hearing.

Who is a project sponsor?

Project sponsors may include any individual, corporation, partnership, association, trustee, municipality or other legal entity. Applications are submitted to APA's Division of Regulatory Programs. For information on project applications and how they are processed, please refer to APA's rules for reviewing projects in 9 NYCRR Part 572.

How is notice of a project hearing provided?

At the direction of the APA Board, APA staff will provide public notice of a project hearing. Hearing notices are published in the Environmental Notice Bulletin and a local newspaper. The notices contain project and hearing information, and provide directions for the public to request party status in the project hearing. Hearing notices are also posted on the project site. Project hearing notices are required by law to be sent to:

- Project sponsors and all owners of the project site.
- Adirondack Park Local Government Review Board.
- Local municipalities where the project is located.
- Any county or regional planning board.
- Any town or village within 500 feet of the project site.
- All landowners within 500 feet of the project site.

Hearing locations. For the convenience of the public, hearings are generally held in a public building in the municipality where the project is located. All hearing sessions are open to the public.

What is a public information session?

Members of the public who do not seek to participate formally in the hearing but want to learn more about the proposed project and/or to provide written or oral comments on the project can do so at a public information session. Generally, the project sponsor will do a presentation on the proposed project first, followed by an opportunity for the public to comment. Comments offered during a public information session will be considered by the APA Board as public comment on the proposed project. Public information sessions are scheduled at locations and times with the goal of public accessibility.

What is a pre-hearing conference?

The ALJ who is appointed to preside over the hearing may convene a pre-hearing conference to identify the parties to the proceeding and the issues to be adjudicated. The ALJ may establish schedules for briefs, pre-filed testimony, or discovery procedures. Parties may also be asked to meet to try to resolve their differences.

Participation at the pre-hearing conference is limited to APA staff and to those who seek to be parties in the hearing. The project sponsor is a party. Anyone required to receive notice of the project hearing (see above) may also elect to be a party. Finally, other individuals or organizations may be granted party status as interveners after showing:

- An economic, social or environmental interest likely to be affected by an APA decision on the proposed project; and/or
- That granting party status is necessary to further the purpose of the hearing.

At the pre-hearing conference, the ALJ may ask questions of each party to clarify, consolidate or resolve potential issues. Project hearing issues include:

- Those identified by the APA Board.

- Other issues identified by the ALJ having the potential to result in denial or major modification of the project, or that would impose significant conditions on an approved or modified project.

To narrow the issues to be addressed in a hearing and to determine those facts which are not in dispute, the ALJ may require the parties to describe what evidence they would present at a hearing. Each party should be prepared to identify all documentation or other evidence it intends to present, the names of its witnesses and the nature of their proposed testimony, and all other information required by the ALJ to clarify what the party wants to address.

The ALJ will usually prepare written rulings determining party status and the issues to be adjudicated in the project hearing.

What are a hearing party's obligations?

There are a number of obligations that accompany party status. These include attending hearing sessions, presenting testimony when called upon, and questioning other parties' witnesses on a schedule determined by the ALJ.

A party may appear in person or through a representative who can demonstrate that he or she has been chosen by the party. A party may select an attorney as its representative, but this is not necessary.

Participants who do not attend a hearing session will lose the opportunity to cover material addressed at that session, unless otherwise provided by the ALJ.

How is a project hearing conducted?

The ALJ presides over the project hearing and sets its time, date and place. The ALJ has broad authority to control and maintain the efficiency of the hearing under APA's hearing process rules and Article 3 of the State Administrative Procedure Act.

Length of hearings. The length of a hearing depends upon the number of issues to be adjudicated and their complexity. Some hearings are concluded in a single day; a complex project can take several days or more. Hearings generally run from day to day, with up to four sessions per week. During the course of a long hearing, the ALJ may grant an adjournment to accommodate the parties and their witnesses. The ALJ will take into account the schedules of all of the parties and APA staff in determining a hearing schedule.

Are there restrictions on how information is passed to the ALJ?

Yes. Communications between individual parties, their representatives, APA staff and the ALJ, other than on ministerial matters such as scheduling, are prohibited as "ex parte" contacts. This means that ALJs cannot discuss other matters related to the proposed project or the hearing with any of the parties without providing an opportunity for all parties to participate in the discussion at the same time. If a party communicates with an ALJ in writing, the party must send a copy of the communication to all other parties at the same time. Likewise, the parties may not discuss the proposed project or the hearing with any member of the APA Board. The APA Board's information about a proposed project is limited to the hearing record as a matter of

fairness to all parties involved in the hearing. Parties may confer among themselves at any time during the hearing process to resolve disputes and make the hearing process more efficient.

How do I challenge an ALJ's ruling?

Any ALJ's ruling may be appealed to the APA Board at the end of the hearing by motion of a party or as part of a closing statement. The APA Board may also decide to review an ALJ ruling during the hearing where the failure to decide an appeal immediately would unduly disadvantage one of the parties or would result in significant inefficiency in the hearing process. If the APA Board decides to hear the appeal, all parties will have an opportunity to be heard on whether the appeal should be granted or denied. The hearing will continue, unless the ALJ or the APA Board adjourns it, until the appeal is decided.

How is the case for each party presented?

The project sponsor is the first to proceed since it bears the burden of proof. The project sponsor presents its case through witnesses, who may include consulting engineers, biologists, or other technical experts.

Discovery or disclosure. It may be necessary for one party to get information from another party (this is called discovery or disclosure). The burden to supply the requested information is on the one who has the documents. Generally, there is full disclosure of all relevant evidence. The ALJ will make rulings on disclosure when objections or motions are filed.

Direct examination. The project sponsor will question each witness within that person's area of expertise and experience. Called direct examination, these questions usually relate to the role the witness had in the design and development of the project. Site plans and other documentation may be presented as exhibits.

Cross-examination. After direct examination, staff and each party are given an opportunity in a sequence established by the ALJ to ask the witness questions through cross-examination. There are several reasons for the opposing parties to cross-examine each other's witnesses:

- To bring out information left untouched by the direct examination.
- To test the truthfulness and credibility of a witness.
- To test the accuracy and reliability of a witness's perception of observed events.
- To probe the basis of expert opinion.

After the applicant has called all of its witnesses, APA staff and the other parties present their cases through witnesses. Each party has an opportunity to counter or further the presentations of the others. The project sponsor, however, retains the burden to demonstrate that its proposed project will comply with all applicable standards.

Exhibits. Parties may also present and support their cases through the production of documents, photos, maps, etc. called "exhibits". Exhibits are usually presented by a witness who is familiar with them and who can explain what they are and mean. In some cases exhibits are presented simply upon the agreement of the parties, or based on some written certification that they are authentic.

APA staff's role. APA staff, while not a formal party, participates fully in a project hearing, represented by an APA attorney. APA staff testify and provide exhibits pertaining to staff's review of the proposed project as relevant to the issues identified for adjudication. Staff have the additional obligation of ensuring that a full and complete hearing record is developed for the APA Board's consideration.

Closing arguments. After all parties have concluded their cases, the ALJ will entertain oral closing arguments or set a time period for filing of written closing arguments.

Closing the record. The ALJ will close the hearing record according to a schedule he or she sets. After the record is closed, the ALJ will certify the completeness of the record to the APA Board. A public copy of the hearing record will be available for review at APA's headquarters and may also be obtained from APA pursuant to the Freedom of Information Law by e-mailing a request to APAFoil@apa.ny.gov.

Costs and fees. There is no fee for participation in an APA project hearing. Costs of hearings, including hearing facilities, notice publications and a stenographic transcript, if prepared, are paid by APA. If a party elects to hire an attorney or expert witnesses, however, it is responsible for all associated costs. Any party introducing documents is responsible for the costs of duplication and distribution to the other parties. Anyone may purchase copies of the stenographic transcript directly from the court reporter.

How is the APA Board's final decision made after a project hearing?

ALJ's review. The APA Board typically does not ask the ALJ to provide any review of the record beyond certifying that it is complete. If the APA Board has asked the ALJ to prepare a hearing report, the ALJ will conduct an impartial review of the stenographic record and all exhibits and written closing arguments, giving appropriate weight to each and to the testimony of each witness. All issues adjudicated during the hearing may then be addressed by the ALJ in a series of Findings of Fact and Conclusions contained within the ALJ's hearing report. The ALJ's report is part of the hearing record provided to the APA Board.

APA Board final decision. The APA Board considers the hearing record and makes a final decision based on its deliberations during a regular, public meeting of the APA Board. To assist the APA Board in its review of the record, the Board may have the aid and advice of APA staff who have not been involved in the review of the proposed project or the hearing. The APA Board's decision must be made within sixty calendar days of its receipt of a complete record from the ALJ unless the project sponsor agrees to an extension of that deadline.

The APA Board's final decision will:

- Approve the project as proposed, with or without conditions,
- Approve a modified project, with or without conditions, or
- Deny the proposed project.

Distribution of APA Board's final decision. Copies of the APA Board's final decision must be sent to the same individuals as the project hearing notice and to all parties to the hearing.

Can the final decision on a proposed project be appealed?

Yes. The APA Board's final decision may be appealed to state court pursuant to Article 78 of the Civil Practice Law and Rules.

Where can I get a copy of a final decision on a proposed project?

Copies of all APA Board final decisions are available for public review at the APA headquarters or may be requested by e-mail at APAFOIL@apa.ny.gov pursuant to the Freedom of Information Law.

Where can I obtain additional information about APA project hearings?

Contact the APA by telephone at (518) 891-4050 or in person at 1133 NYS Route 86, Ray Brook, New York. Also, visit APA's website at www.apa.ny.gov.