

263—9.10(368) Public hearings.**9.10(1) General provisions.**

a. Public hearings shall be held on dates and locations determined by the board. However, whenever possible, the public hearings shall be held in or near the locale so affected. The hearing shall be held in a place open to the public.

b. The board shall, prior to serving notice, designate a suitable place to make the petition or plan available for public inspection. The board shall ensure that the petition or plan is available on or before the date of notice and publication.

c. Before testimony is presented, the record shall show the identity of the committee members present, identity of the assistant attorney general and board staff, identity of the primary parties and their representatives, and the fact that all testimony is being recorded. The chairperson may also outline any ground rules and time limitations to allow all parties an opportunity to speak. The committee chairperson or assistant attorney general representing the committee may make a brief opening statement, which may include a summary of actions taken by the committee prior to the hearing.

d. The committee chairperson shall be in control of the proceedings and shall have the authority to admit or exclude testimony or other evidence and to rule on all motions and objections.

e. The committee shall listen to testimony and arguments from all those concerned and shall be free to ask questions of anyone at any point during any hearing.

f. Legal counsel shall be at the discretion and expense of any party to the proceedings.

g. Parties appearing before the committee should select one or two persons to serve as primary spokespersons for their positions.

h. Any objection with respect to the conduct of the hearing, including an objection to the introduction of evidence, may be stated either orally or in writing, shall be accompanied by a short statement of the grounds of such objections, and shall be included in the record. No such objection shall be deemed waived by further participation by the objector in the hearing or proceeding.

i. The committee may adjourn a hearing for good cause from time to time, upon request of either party or legal counsel representing the committee, for the purpose of a fair hearing.

j. Decorum. The committee chairperson shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

9.10(2) Format of public hearings. The format of the public hearings will generally follow the procedure outlined below. However, the committee chairperson may tailor the format to the nature of the case. The petitioners shall have the burden of proof and shall present their evidence first. Other parties in the case will present their evidence following the petitioners as determined by the committee chairperson. The format will generally permit each party an opportunity to make an opening statement, including the names of any witnesses to be called to explain the party's basic arguments, and to present testimony, evidence and exhibits in support of the party's arguments.

a. After each party's presentation, questions may be asked of the presenters by members of the committee. Then the other parties may ask questions and cross-examine witnesses. Then others who are not parties may ask questions of the presenters.

b. After the cross-examination and questioning are completed, there will be a comment period during which those who are not parties may make comments expressing their views regarding the petition. Those who wish to comment need not preregister with the committee prior to the hearing, but need only to sign up at the time of the hearing. The committee chairperson may limit the length of the comments when a large number of people wish to testify.

c. After the comment period, the parties will be offered an opportunity for rebuttal to evidence presented during the hearing. The petitioner will have the final opportunity for rebuttal.

At the conclusion of all presentation of evidence, each party shall be permitted an opportunity for a closing statement summarizing its arguments.

d. Failure to appear.

(1) If a party to a hearing fails to appear, that party shall be deemed to have waived opportunity for the hearing or to participate in the hearing unless there is a show of good cause for such failure.

(2) If a petitioner fails to appear at a proceeding, the hearing may be dismissed or postponed at the discretion of the committee, or the committee may approve the petition on the basis of verified proof and affidavits, if any, filed in the case, which shall be considered as having been offered in evidence at the hearing by the petitioner.

9.10(3) Testimony at hearings. At the public hearing, evidence may be presented in narrative form or question and answer form for each witness at the discretion of the committee chairperson.

a. At the public hearing, all parties shall be allowed the opportunity to cross-examine witnesses and be given an opportunity for rebuttal.

b. The committee members have the right to examine witnesses at any stage of the witnesses' testimony. The committee chairperson may limit questioning in a manner consistent with law.

9.10(4) Evidence. Rules of evidence shall be those set forth in the Iowa administrative procedure Act. The committee shall observe the rules of privilege recognized by law. It may exclude incompetent, irrelevant, immaterial or unduly repetitious evidence. A finding will be based upon the kind of evidence upon which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based on hearsay or other types of evidence which may or would be inadmissible in a jury trial.

a. The committee chairperson shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

b. Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection must be timely and shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The committee chairperson may rule on the objection at the time it is made or may reserve a ruling until the written decision.

c. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the committee chairperson, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

d. Individuals unable to attend a public hearing may submit written comments to the committee. Written comments shall become part of the permanent file of the hearing.

e. Documentary evidence. When any material or relevant matter offered in evidence by any party is embraced in a book, paper or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If, in the judgment of the committee, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

f. The committee may take note of appropriate public documents and records of a general scientific or technical nature by notice to all parties involved, limiting the time within which such parties may object to the accuracy of the facts sought to be proved from such documents or records.

g. The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents shall be provided to opposing parties. Copies shall also be furnished to members of the committee. All exhibits admitted into evidence shall be appropriately marked and the original exhibit shall be made part of the record. Written or printed materials shall be in sufficient quantity to supply one copy for each member of the committee and one copy for all other parties to the proceedings.

h. Stipulation of facts is encouraged. The committee chairperson may make decisions based on stipulated facts.

i. At any stage of the hearing or after the close of the hearing but prior to decision, the committee may call for further evidence to be presented by the parties concerned. All parties shall be given a copy of said additional evidence and shall have an opportunity to comment on said evidence either orally or in writing as the committee so specifies.

9.10(5) Record of public hearing.

a. Recording of oral proceedings. Oral proceedings shall be recorded either by mechanical or electronic means or by certified shorthand reporters.

b. Any party requesting a certified shorthand or court reporter shall make arrangements for such attendance and expense.

c. The board administrator shall prepare an official record of all proceedings, including testimony and exhibits. Testimony taken by a mechanical recording device may be incorporated by reference if a transcript is not made. Tapes, stenographic notes, or transcription of the oral proceedings will be retained by the board for five years following the decision or until the case is resolved, whichever is later.

d. Upon request, the board shall provide a copy of the whole record or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. A reasonable amount will be charged to cover the cost of providing a duplicate tape to the requesting party. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party.

9.10(6) Posthearing brief. The committee shall allow ten days after the final public hearing within which the parties may file briefs.

a. Unless otherwise ordered by the committee chairperson, initial briefs shall be filed simultaneously by all parties. Briefs shall contain a concise statement of the case. Arguments shall be based on evidence introduced during the proceeding and shall specify the portions of the record where the evidence is found. No new evidence may be included in the posthearing briefs absent a request from the committee and compliance with paragraph 9.10(4)“*i.*” The initial brief of the party who bears the burden of proof shall include all arguments it intends to offer in its brief in support of its case and against the record case of the adverse party or parties.

b. Reply briefs shall also be filed simultaneously, but only by those parties filing initial briefs, on a schedule set by the committee chairperson. A reply brief shall be confined to refuting arguments made in the brief of an adverse party.

c. A copy of such briefs shall be given to the committee and all parties and shall be accompanied by written evidence of service upon all parties.

d. A party’s failure to address an issue by brief shall not be deemed a waiver of that issue and shall not preclude the board from deciding the issue on the basis of evidence appearing in the record.

e. The committee chairperson may set a date and time for oral argument (including a time limit for argument), either in addition to or in lieu of briefs, when in the chairperson’s discretion to do so is deemed necessary or in the public interest. Failure to discuss in oral argument points properly made in the briefs shall not be deemed a waiver thereof.