

Chairman Ernest Lankford called the Special Training Workshop to order for the Board of Commissioners.

Chairman Ted Hairston called the Special Training Workshop to order for the Planning Board.

Vice Chairman Don Lester called the Special Training Workshop to order for the Board of Adjustments.

Commissioner Booth delivered the invocation.

GENERAL GOVERNMENT-GOVERNING BODY-PLEDGE OF ALLEGIANCE

Chairman Lankford opened the meeting by inviting the citizens in attendance to join the Boards in the Pledge of Allegiance.

Special Training Workshop

Chairman Lankford welcomed those in attendance for tonight's Special Training Workshop.

Chairman Lankford noted the following:

- Special Training Workshop is designed for the Board of Commissioners, Planning Board, and the Board of Adjustments
- Members from these Boards will be allowed to ask questions at the end of Attorney Owens' presentation
- Visitors are welcomed at tonight's training, but would respectfully ask visitors not to ask questions due to Attorney Owens having to drive back to Chapel Hill after the workshop

Planning Director David Sudderth introduced Attorney David Owens from the University of North Carolina at Chapel Hill – School of Government.

Planning Director Sudderth noted the following:

- Attorney Owens is a native of North Carolina from Elizabeth City
- Been with School of Government for 22 years
- Is an expert on Quasi-Judicial Procedures

Attorney Owens expressed his appreciation for the invitation to come to Stokes County.

Attorney Owens discussed the following Roles and Types of Decisions:

- In NC, our statutes, our court decisions, and our laws determine the rules you must follow and the process you must follow in making decisions
- The rules are very different depending on what type of decision is involved
- The rules are not based on which Board is making the decision which is a common misunderstanding
- There is not a separate set of rules for each Board (Board of Commissioners, Planning Board, Board of Adjustments)
- The process you must follow in making decisions are based on what type of decision is involved
- There is one set of rules for Legislative decisions, second set of rules for Quasi-Judicial decisions, third set of rules for Advisory decisions, and a fourth set of rules for Administrative decisions
- **Legislative Decisions**
 - Affects the entire community by setting general policies applicable through the zoning or other ordinance
 - They include:
 - Decisions to adopt, amend, or repeal the ordinance
 - Changing the text of the Zoning Ordinance to determine what uses are allowed in a particular district
 - Determining what the setbacks are
 - Determining what the standards are for a decision
 - Rezoning a piece of property
 - Counties were given the authority to do zoning in 1959
 - Legislative decisions have such an important impact on landowners, neighbors, and the public that state law mandates broad public notice and hearing requirements for these decisions
 - General Assembly requires the Board of Commissioners to send all amendments to the Zoning Ordinance to the Planning Board for review and comment
 - Planning Board must look to see if the amendments are consistent to the county's adopted plans
 - The Planning Board must send a written recommendation to the Board of Commissioners
 - The Board of Commissioners must hold a Public Hearing
 - The Board of Commissioners must advertise the Public Hearing in the newspaper twice with the first notification being at least 10 days, but not more than 25 days before the Public Hearing; the second notice must be in a separate calendar week
 - If it is a zoning map amendment, a first class letter notifying the adjacent property owners must be sent
 - Rules are mainly designed to make sure before the Board of Commissioners take any action, those people who are potentially affected have been notified and the Planning Board has made a recommendation to the Board of Commissioners

- The whole idea is to let people know what the Board is thinking about doing, solicit opinions and comments
- The Board then can make a policy choice as to what is best for the County
- **Quasi-Judicial Decisions**
 - Very different from Legislative decision
 - In the nature of a Judicial decision
 - Involves the application of ordinance policies to individual situations
 - Courts have imposed fairly strict procedural requirements on these decisions in order to protect the legal rights of the parties involved
 - Examples include:
 - Variances
 - Special and Conditional Use Permits (even if issued by the Governing Board)
 - Appeals
 - Interpretations
 - Involve two key elements:
 - The finding of facts regarding the specific proposal
 - The exercise of judgment and discretion in applying predetermined policies to the situation
 - The difference between a Legislative Decision:
 - The main difference is that with a Quasi-Judicial decision, the policy choice as to what the standards are has already been made –part of the Zoning Ordinance
 - The Zoning Ordinance defines what standards are applied in making the decision
 - Key factor – Standards involve some degree of judgment and discretion which distinguishes Quasi-Judicial decisions from an Administrative decision
 - Administrative decisions are typically made by professional staff in various government departments which cover the day-to-day non-discretionary matters related to the implementation of an ordinance, including issuing basic permits, interpreting the ordinance, and enforcing it
- If you add an element of judgment and discretion to the decision, that makes it Quasi-Judicial according to our court system
- A person is not entitled to a variance unless they can show practical difficulties and unnecessary hardship that what they propose to do is consistent with the spirit, purpose and intent of the ordinance and substantial justice will be done
- How much hardship is enough to be unnecessary hardship? That is judgment, that is discretion, you send to the Board of Adjustments – Quasi-Judicial decision
- Special and Conditional Use Permits
 - You are only legally entitled to the permit as the applicant, but only if you establish that you meet the standards in the ordinance
- We have a lot of court decisions probably have more than 600 appellate court decisions on zoning in North Carolina since 1980, two thirds deal with Quasi-Judicial decisions

- Courts are very strict about protecting the property rights of the landowners and the neighbors
- Key court case for a Quasi-Judicial decision is from Chapel Hill – Chapel Hill/Humble-Esso Oil Company (Town Council of Chapel Hill denied the Special Use Permit for gasoline stations downtown)
- Humble-Esso sued the Town of Chapel Hill
- Courts ruled that Humble-Esso met the standards in the ordinance; therefore was given the Special Use Permit
- Council can't deny the Permit just because citizens do not want a gas station downtown
- Council must have evidence and facts that they do or do not meet the standards in the Zoning Ordinance
- Council could have denied the Permit if the evidence and facts showed that it will substantially be harmful to adjoining property values and not compatible with the surrounding neighborhood
- Courts also imposed that essential elements of due process/judicial proceedings must be followed:
 - Must have substantial, competent material evidence in the record to establish the facts
 - Must have witnesses who are sworn under oath who are subject to cross-examination
 - Adverse parties must have an opportunity to present evidence
 - Have an impartial decision maker with the decision based solely on evidence properly presented and in the record at the hearing
 - All are necessary to protect the legal rights of the owner and the neighbors who are affected by the decisions
- When determining a Quasi-Judicial decision, the question is not – “Would this project be a good thing for the neighborhood?”
- That is not the issue
- You are not holding a hearing to determine if people think the project is a good idea or not
- Opinions whether the project is a good idea or not are irrelevant
- The policy choice has been made when the ordinance was adopted
- If the permit meets the standards in the Zoning Ordinance, the applicant is legally entitled to the permit
- If the permit does not meet the standards in the Zoning Ordinance, the applicant is not entitled to the permit
- One reason to hold the Public Hearing is to gather evidence and facts as to whether or not that project meets the standards in the Zoning Ordinance
- Decision maker can be Board of Adjustments, Planning Board, or Governing Body
- Evidence must be substantial, competent, material evidence in record

Chairman Lankford confirmed with Attorney Owens that any Variance, Special and

Conditional Use Permits that are Quasi-Judicial must meet the standards in the Zoning Ordinance.

Commissioner Walker questioned Attorney Owens what happened if a Council did not follow the correct procedures in a Quasi-Judicial decision?

Attorney Owens responded:

- It depends on when the discovery is made that the specific procedures were not followed
- Key factor is whether a decision has been made
- If a decision has not been made, you can always back up and start over and follow the right procedures
- Once the Quasi-Judicial decision has been made, that is it
- If someone doesn't like your decision, they can file a petition for review of the decision in the Superior Court – very short time frame
- The appeal for a Quasi-Judicial decision has to be filed with the court within 30 days of receipt of the decision
- The clock starts once the written decision is filed with the Clerk to the Board that made the decision and mailed to person who requested the permit
- On day 31, that decision is final and basically the decision stands
- If mistakes were made, there is no way to deal with them at that point
- The Board that made the decision has no authority to go back and revisit the case
- Prior to making the decision, the Board can always start over and follow the correct procedures
- With a rezoning or a text amendment, the Board can amend the ordinance to add or delete a specific item; the Board must follow the process which includes a public notice, public hearing and a Planning Board recommendation
- You can always revisit a Legislative decision
- Once a Quasi-Judicial decision is made and mailed, the decision by the Board is complete

Attorney Owens discussed the process that must be followed in a Quasi-Judicial Decision.

Attorney Owens noted:

- Applicant applies for a Quasi-Judicial decision
- First step: Staff reviews to see if it is a complete application
- If it is a complete application, a Public Hearing can be scheduled
- Lot of local governments will send a Quasi-Judicial decision to the Planning Board for an advisory review before sending it to the decision-making board (optional)
- Can be a good idea to allow someone else to review the application before sending to the decision-making board; Planning Board can be a sounding board
- As a lawyer, it makes me nervous, it is one more opportunity for something to be done wrong
- Basically, there is very little law about an advisory board that is making a review of the application prior to going to the decision-making board
- It is a good idea for the advisory board to follow the rules of the decision-making board

- Rules that apply to decision-making board:
 - Must hold a hearing
 - Purpose of the hearing is to gather evidence
 - In order to make a decision, the burden is on the applicant, not the staff, not the county
 - The applicant has to show enough evidence that the request meets the standards
 - If you get an application that does not have sufficient evidence to determine the standards are met, you must deny the permit
 - If opponents show enough evidence that the applicant does not meet the standards, you must deny the permit
 - Decision-making board must determine what are the true facts of this case based on the evidence that was heard
 - Evidence in the record must be competent, substantial material
 - One thing that makes evidence competent is that it is from a sworn witness
 - Witnesses are offering testimony, not citizens offering opinions
 - All witnesses, staff, applicant, and anyone giving testimony must be sworn in
 - This reminds people who are testifying that this is a solemn procedure and they need to stick to the facts and the truth
 - If someone testifies that this will hurt their property values, they must offer facts as to why it will harm property values such as:
 - Traffic issues
 - Noise issues
 - Odor issues
 - Dust issues
 - Facts must be relevant to determine whether the standards will or will not be met
 - Can't base the facts on hearsay
 - Witnesses must be present in order to be cross examined
 - Opinion testimony is only allowed from an expert witness
 - State statutes have been amended to say particularly when it comes to traffic impact and property value impacts, you can only take the opinion evidence from a qualified expert witness
 - Expert has to have done an appropriate study to base the facts on
 - A non-expert witness can give you facts about something they have witnessed such as the number of accidents that they have seen at a particular intersection
 - Evidence can only be considered that is properly documented in the record
 - The parties who are affected by the decision have a legal right to see the evidence in the record
 - The decision-making board can't talk outside the hearing to gather facts, because the opposing party does not have an opportunity to cross examine
 - No outside evidence can be gathered by the decision-making board
 - Reiterated the decision-making board can't talk to anyone outside the hearing

County Attorney Powell questioned if the decision-making board could look at similar properties that have already had special use permit approved?

Attorney Owens responded:

- A member of the decision-making board can go by and visually look at the site
- The member of the decision-making board can't get out and talk to the applicants or the neighbors
- If the member sees something is relevant, the member of the decision-making board can bring the issue up at the hearing so that the applicant or any opponent can hear the issue
- Would advise against the member of the decision-making board visiting a site that is similar to the special use permit that is being heard
- The decision-making board can schedule a trip, advertise the meeting so that anyone can attend – meet all the requirements of the open meetings laws
- Can have staff visit a site and then testify at the hearing
- A member of the decision-making board can visit a site if it is a Legislative decision

Commissioner Walker questioned what should a member of the decision-making board do if they receive emails, calls, comments during the public comments section of a regular meeting, etc. about the case before the Public Hearing?

Attorney Owens noted:

- If someone is offering a comment about a Special Use Permit at a regular board meeting before the Public Hearing has been held, would have the manager or the county attorney stop the individual, thank him/her for their concerns, but explain the issue is a Quasi-Judicial matter
- Offer the individual an opportunity to speak at the Public Hearing
- Must advise the individual that the Board can't use any of the comments in making the decision
- Politely and discreetly asked the individual to come back to the Public Hearing
- You must try at best to avoid gathering evidence outside the hearing
- It is your obligation to listen politely, but inform the individual that the law does not allow you to talk about the permit
- Advise them to come to the hearing
- Members of the decision-making board must disclose at the hearing information that they have received about the case – have the Clerk document this in the record

Commissioner Walker noted:

- Felt he was caught in the middle with this procedure
- Always welcomed public input
- Feels public input helps the decision making

Attorney Owens noted:

- Exactly right, it is important to remember, the process is not to make life miserable and difficult, it is there to protect the rights of the property owners
- The applicant has a right to know what evidence you are considering
- The neighbors have a right to know what evidence you are considering
- Can be confusing at times

Attorney Powell confirmed with Attorney Owens that a neighbor could not testify that the smell is something that I don't like and is going to affect the value of my property; the neighbors must know what the standards are in the zoning ordinance and present evidence why this case does not meet the standards.

Attorney Owens also noted that the citizens can't simply organize huge crowds, send hundreds of emails, appear at the hearing wearing signs opposing the issue, have numerous speak opposing the issue; they must present factual evidence to show the applicant does not meet the standards as well as the applicant must show that he does meet the standards.

Attorney Owens noted one particular case where the court ruled:

- Unsubstantiated fear and speculation is not a fact
- The decision-making board can't make a decision on unsubstantiated fear and speculation
- You must have facts

Attorney Owens noted two other very important facts:

- At the end of the hearing, the decision-making board must make finding of facts
- The decision-making board must put in writing the facts
- The decision-making board must specify what it determines the facts to be and must document the basis for the decision
- The decision-making board must avoid conflicts of interest
- The Constitution and the NC General Statutes give parties to a Quasi-Judicial Decision a legal right to an impartial decision maker
- In addition to financial impact, bias (defined as a predetermined opinion that is not susceptible to change), undisclosed ex parte communications about the case, and close family or business ties also disqualifies members from participating
- Nonparticipation includes the discussion as well as voting (leave the room and then come back after the case is over)

Manager Morris confirmed with Attorney Owens that if there was a close lifelong friendship with the applicant or the adversaries to the applicant, the member should use their

judgment in this situation as to recuse themselves from the process.

Attorney Owens noted that if this was a friend that you spend every summer vacation with, the member should disqualify himself.

Commissioner Walker confirmed with Attorney Owens that Board of Commissioners has a legal obligation as an elected official to vote unless the relationship is close enough that their impartiality is legally in question.

Chairman Cavanaugh confirmed with Attorney Owens that even if a member recused himself/herself from the actual vote due to a conflict of interest, they are not considered when computing the required majority.

Chairman Lankford expressed appreciation to Planning Director David Sudderth for scheduling the training and administration staff for advertising the session so that the public was aware of the training.

Chairman Lankford expressed appreciation to everyone for taking the time to come to the workshop.

Attorney Owens provided Board members with a training booklet titled "Workshop on Quasi-Judicial Procedures and Decision".

Chairman Lankford expressed appreciation to Attorney Owens for providing the Boards and the citizens a very informative presentation.

Adjournment

Board of Commissioners

Chairman Lankford entertained a motion to adjourn the Special Training Workshop.

Vice Chairman Inman moved to adjourn the Special Training Workshop. Commissioner Jones seconded and the motion carried unanimously.

Board of Adjustments

Chairman Cavanaugh entertained a motion to adjourn the Special Training Workshop.

Member Jessup moved to adjourn the Special Training Workshop. Member Boles seconded and the motion carried unanimously.

Planning Board

Chairman Hairston entertained a motion to adjourn the Special Training Workshop.

Member White moved to adjourn the Special Training Workshop. Member Snyder seconded and the motion carried unanimously.

Darlene M. Bullins
Clerk to the Board

Ernest Lankford
Chairman