

Quasi-Judicial Hearing Training

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Commerce
CITY

Board of Adjustment's Role in Hearings

- Pre-hearing preparation.
- Overview of the quasi-judicial role.
- Your role during the hearing.
- Considerations when deliberating.
- Court challenges to your decisions.

The Quasi-Judicial Role

- As a member of the Board of Adjustment, you are required to make decisions affecting the protected property rights of a specific person or entity.
- In these situations, you are acting like a judge.
- Why?
 - Due Process: No person shall be deprived of life, liberty, or property without due process of law.
 - It is your duty to provide due process.
- You must act like a judge – before, during, and after the hearing.
 - No ex parte communications or pre-hearing advocacy.
 - Provided a fair hearing, which requires a fair, unbiased, and impartial judge.
- You will be determining the facts based on the evidence at the hearing and applying those facts to the law (i.e., the approval criteria).

What is Quasi-Judicial?

- Conditional Use Permits (Sec. 21-3230)
- Rezoning and Zone Changes (Sec. 21-3232)
- Vested Property Rights/Site Specific Development Plans (Sec. 21-3234)
- PUD Zone Documents (Sec. 21-3251)
- Preliminary Plat
- NOTE:
 - Annexations require a public hearing but are legislative rather than quasi-judicial decisions

Pre-Hearing Preparation

- Get in the “judge” frame of mind early
 - Stay neutral. Don’t make up your mind before the hearing.
 - Don’t make prejudicial comments (before or during the hearing).
 - Don’t get involved outside of the hearing.
 - Don’t sign pro or con petitions.
 - Avoid ex parte communications.
- Why should you avoid ex parte communications?
 - Decisions should be based only on what’s in the record created at the hearing.
 - Potential for actual or perceived bias or impartiality.
 - Can invalidate your decision.
- If you are involved in ex parte communication, determine whether you can remain impartial.
 - If you are able to remain impartial, disclose that you had ex parte communications and that you can remain impartial and make your decision on the evidence presented at the hearing.
 - If you are not able to remain impartial, recuse yourself.

Pre-Hearing Preparation

Reviewing the Staff Report

- Road map for your findings.
- Guidepost for your questions.
- Broad document designed to give background, context, and analysis.
- Considerations may be provided for your contemplation.

Meeting Preparation

- Is this a height exception, a variance, a use-by permit, or an administrative appeal?
- What review criteria will apply?
- What questions do I have about the review criteria and its applicability to a particular case?

Pre-Hearing Preparation

- As you prepare, it is important to remember: Your hearing is “the hearing,” and a reviewing court won’t retry the case.
- A reviewing court will base their decision on the record you make, including:
 - The procedures you used;
 - The evidence you considered; and
 - The reasons for your decision.
- **Know what topics and information are important for your decision and craft questions that will produce testimony on those topics.**
- You want to get all the information you need to make a decision into the record.

Pre-Hearing Preparation

Good Questions:

- Tied to the approval criteria.
- “Can you explain how this [variance / use-by permit] is consistent with the policies and goals of the comprehensive plan, any applicable area plan, or community plan?”
- “How might this height exception impact the view of surrounding neighbors?”
- “How is the variance the minimum needed for the reasonable use of the land?”

Questions That May Lead the Board Astray:

- Not tied to approval criteria, contain opinions, unrelated to the application.
- “Have there been other variances for this height of fence?”
- “I don’t like this similar development. Applicant, can you promise to do something different?”
- “I did some research on this and found...”

Hearing

- Not your job to decide whether an application presents a good idea or one that you like or don't like.
- Your job is to relate the application and facts presented at the hearing to a set of standardized review criteria, and decide whether the application meets them all.

Hearing

- Fairness is important.
 - Stay neutral.
 - Don't make prejudicial comments.
- Listen to the testimony.
 - You will need to determine the facts based on the evidence presented and apply those findings to the approval criteria.
- Be able to distinguish fact from opinion.
- **The hearing is the time to ask clarifying questions and get testimonial evidence in the record.**
- **Don't offer your own evidence. You are the fact finder, not a witness.**

Deliberations

- Once you've heard the staff and applicant presentations, heard public comment, and asked your questions, it's time to deliberate.
- **This is where you can take a stand and announce positions.**
- Discussion of the evidence is critical!
 - This is where you formulate your decision.
 - A reviewing court would look at your deliberations to understand why you decided as you did.

Deliberations

- Tips:
 - Focus on the key issues.
 - Focus on the relevant decision-making criteria.
 - Have the criteria handy.
 - Discuss the relevant evidence that has been presented to you.
 - Drill down on “why” you believe an application does or does not meet the approval criteria.
 - The “why” should be based on the evidence presented.
 - When you are prepared to discuss the criteria, your deliberations will help put you in a defensible position for your decision.

Decisions

- Understand what your options are, which are often:
 - Approve;
 - Approve with conditions;
 - Deny; or
 - Continue for further consideration and/or action at a future date

Decisions

- Use a guiding document, such as the staff report, or script to make your decision.
- Be cautious when imposing conditions approval. There can be problems when the condition is:
 - Not based upon any established legislation;
 - An attempt to regulate a matter over which the Board has no authority; or
 - Is vague or difficult to enforce.
- In some situations, it is appropriate to continue a hearing and direct staff to draft conditions of approval to be brought at a future date.

Judicial Challenges

- Land use decisions may be challenged under CRCP 106(a)(4).
- A person challenging a decision has 28 days to file an appeal.
- The appeal is “on the record,” meaning a court will not hear new evidence.
- A court will only overturn your decision if it is:
 - An abuse of discretion;
 - Exceeds your jurisdiction; or
 - Arbitrary and capricious.