



QUASI-JUDICIAL HEARINGS

EXPLANATION OF QUASI-JUDICIAL HEARINGS

In the Town of Benson, members of the Town's Board of Commissioners and the Planning Board jointly hold quasi-judicial hearings for *special use permits*, as required by state law.

The Town of Benson's Board of Adjustment also holds quasi-judicial hearings for *variance requests* and *appeals of staff decisions*.

During a quasi-judicial hearing, the Boards must hold an evidentiary hearing based solely on written and oral evidence presented by witnesses testifying under oath and subject to cross-examination. The quasi-judicial hearings do not involve setting new policies, but rather the application of previously adopted policies to the parties involved.

Unlike Legislative decisions (like for rezoning's), where the Boards, state law, and constitutional considerations require that a quasi-judicial decision must be based solely on the evidence presented and cannot be based on the Boards' or witnesses' unsubstantiated opinions. Put differently, a quasi-judicial decision is one that requires the Board members to find facts and apply the standards set forth in the Town's ordinance to a specific situation.

EVIDENCE REQUIRED

There must be "substantial, competent, and material evidence" in the record to support each factual determination; the findings cannot be based on conjecture or assumptions.

North Carolina General Statutes (NCGS) § 160A-393 prohibits a person from giving opinions about scientific, technical or other specialized subjects unless the person, by knowledge, skill, experience, training or education, is in fact an expert on the subject.

NCGS §160A-393 specially prohibits opinions that "the use of property in a particular way would affect the value of other properties" or opinions that "the increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety" unless the witness is an expert on the subject.

BURDEN OF PROOF

The applicant will bear the burden of presenting evidence sufficient to allow the Board's to reach the conclusions set forth in the Findings of Fact as well as the burden of persuasion on those issues.

EX-PARTE COMMUNICATION

In all quasi-judicial hearings, all rulings must be based only upon the evidence in the record. Any direct or indirect communication (verbal, written, electronic, or graphic) between a Board member and a proponent, opponent, or other interested party received outside of the record is considered "ex-parte communication".

Board members should not receive evidence or argument on a pending quasi-judicial matter outside of the official public hearing on the matter. Note that this is different from a legislative matter before the Board, in which case Board members are free to discuss legislative matters with citizens at any time.

It is inappropriate for the Board member to discuss or read correspondence concerning the quasi-judicial matter outside of the public hearing.

Please do not approach or attempt to communicate with a Board member about a pending public hearing; doing so may provide legal grounds for a court to overturn the Board's decision.