




**Legal & Ethical Considerations for
Quasi-Judicial Hearings**

Planning & Zoning Continuing
Education Update
11-13-2023

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Requirements for Rules of Procedure


- Required by state statute – broad latitude in adopting local rules not in conflict with state laws.
 - Planning Commission: 6-29-360(B)
 - Zoning Board of Appeals: 6-29-790
- County Council may alternatively require local bodies under its authority to follow rules adopted by council.



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Rules of Procedure - Purpose

- To set expectations for the body, individual permit applicants and the public.
- To provide for the fair exchange of information while allowing for efficient resolution to issues.
- To govern the conduct of members, and the public during meetings



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Local Rules are Subject to State Law

- State statutes expressly regulating conduct of government bodies preempt local rules
 - SC Freedom of Information Act
 - SC Ethics Act
 - SC Local Government Planning Act
 - SC Administrative Procedures Act



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Parliamentary Basics

- **1. Notice**
- **2. Quorum**
- **3. Hearings and evidence**
- **4. Voting**
 - MAJORITY RULE
- **5. Written decisions and records of actions**



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Notice

- Annual notice of regularly scheduled meeting calendar
 - Agenda?
- Mailed notice to parties in interest
 - Parties after Citizens v. Greenville County (2019)
 - General public not a party in interest
- 24-hour minimum notice of regular/called meetings to public & media
 - Posting of notice and agenda:
 - Location of meeting,
 - Newspaper if statute requires
 - Media requesting notice and
 - County website if regularly maintained



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Meetings by Alternate Means

- Rules must authorize alternative methods of meeting/hearings by ordinance or rule.
- Must be provided by the lowest common means to the public – generally means telephone conference line.
- Can also provide additional video streaming methods such as Zoom, Facebook live, YouTube, public access TV.
 - Some services require the public to register and track information
 - Is it a recordable service?
 - If used for minutes preparation, you must save the recording for a minimum of 2-years



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Quorum

- No official action can be taken without a quorum present
 - Acts are *void ab initio* absent a quorum
 - *Anderson County v. Preston* (2019)
- Majority of meetings require a simple majority of members – 50% plus 1
- Absent a quorum?
 - Adjourn
 - Recess and try to get a quorum
 - Fix the time to adjourn



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Agenda & Amendments

- Agendas are required at all meetings of public bodies
- The ability to add items to the agenda once posted is limited!
 - **Before the meeting**
 - items may be added so long as a new 24-hour notice is provided
 - **Once the Meeting has begun**
 - an item for which action can be taken may be added with a 2/3 vote.
 - Final action item added must have 2/3 vote and a finding by the chair that an emergency or exigent circumstance exists.
 - emergency must be out of the body's control or influence



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Hearings & Evidence

- Parties may appear in person or via an agent – attorney, broker, representative
- Bodies adopted rules should outline all procedures to be followed by the parties re: witnesses, receiving evidence, orders etc.
- State statute may grant the body subpoena and contempt powers
- Applicant has burden of proof
 - Generally should argue first and last



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Rights of Applicants

- Applicants must be granted their Due Process and Equal Protection rights – 14th amendment (US Constitution)
 - **Due Process:** the constitutional right to
 - Notice;
 - A meaningful opportunity to be heard; and
 - Judicial review
 - **Equal Protection:** *similarly situated* applicants must be treated in a like manner using the same rules and procedures



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Decisions

- The body has the authority to approve/deny, affirm/reverse or modify an application or decision of staff/officials
- Majority vote - Members must be present to vote absent a state statute or specific local rule
- Written decision must be mailed to the parties or developer (land development application)
 - Certified if statute or rules require it.
 - Each conclusion of law and finding of fact must be separately stated



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Appeals from Decisions

- Applicant/appellant bears the burden of proof in any appeal
- Filing timelines are statutory and mandatory
 - Generally, a 30-day requirement
- Appeals to Circuit Court
 - Satisfies the constitutional requirement for judicial review



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Ethics & Responsibilities

- SC Ethics Act – Prohibits use of office/employment for financial gain
- Officials must recuse themselves from consideration and vote on any matter they have a “economic interest’ in.
 - Interest greater than that of the general public of \$50 or more
- File a recusal letter/form with the chair outlining the conflict
 - Must be read into the minutes



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Recusal by a Member

- Member can not participate in any part of a discussion of the conflicted matter
 - Ethics Commission: leave the room if possible
 - If you can’t leave the room – avoid any action that could be read as influencing discussion/vote
- Member can not vote on the matter
 - *Anderson v. Preston*: conflicted votes will be invalidated and can’t be counted in a quorum
 - SC doesn’t follow the *Single Tainted Vote* rule.



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Ethics

- Personal bias – not an economic interest
- Should you participate in debate and voting
 - Personal decision: does this impact the legal right of an applicant/individual
- Pitfalls of Social Media
- Ex Parte Communications
 - Communications withheld from one or more parties



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Questions?

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