

Staying Out of Court while Serving on a County Appeals Board

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Every year, county councils across South Carolina appoint hundreds of citizens to voluntarily serve on a variety of county appeals boards. These boards hear citizens' appeals from the decisions related to property tax assessments, variances from zoning requirements, and land development activities. Each plays an important role in ensuring that county ordinances or regulations are applied evenly and fairly.

The citizens appointed to serve on these boards have tremendous authority to approve or deny citizen disputes. For that reason, it is vital that board members understand the importance of uniformity and procedures when tasked with decisions involving individual citizen applicants. Two of the most important concepts for board members to understand is providing every citizen their guarantee to due process and equal protection, both of which are rights granted in the U.S. Constitution.

As an appeals board member, the first question that may be asked is what exactly is due process? The next question is, of course, how do you provide it in every case? The fundamental requirements of procedural due process include providing applicants adequate notice of any scheduled hearing, an opportunity to be heard in a meaningful way, and the opportunity for judicial review of any decision of the appeal board.

In many cases, state statutes or local ordinances will prescribe the method of providing the applicant notice of hearings. If not, the board's local rules should specifically provide a uniform method of notifying all parties of a planned hearing. The notice to the applicant should provide all of the relevant information they will need to prepare for their hearing. This information should include not just time date and location, but also the rules and process that the board will follow.

The burden of proving any appeal lies with the citizen applicant. Once the applicant gets before the board, it is important

that specific procedures are followed that provide the applicant with sufficient information concerning the type of evidence that can be introduced to support the basis of their appeal, and their ability to rebut evidence presented by the county. Both citizens and appeals board members should also understand that the



right to due process does not require the board to follow all of the formal rules and evidentiary procedures required of trial-type hearings before the various state and federal courts. Due process before administrative boards is flexible and calls for such procedural protections as the particular situation demands.

The final element of due process is the citizen's right of appellate review. Citizens have the right for review in the state courts of the final orders of administrative boards for errors of law. The process for appellate review is generally provided by state statute or in the local ordinance. Appellate review is initiated by the citizen by filing notice of appeal to the Administrative Law Court in the case of Boards of Tax Assessment orders, or to the circuit court in the case of Board of Zoning Appeals and Planning Commission orders. The burden of proving any appellate review

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lies with the citizen.

The other important constitutional protection granted to citizens is the right to equal protection. Equal protection in administrative hearings refers to two basic concepts. First, it means that the ordinance or regulation that forms the basis of a citizen's appeal is a reasonable regulation meant to achieve a legitimate government interest and is not arbitrary in its application. Local regulations and ordinances should clearly define what conditions or requirements that a citizen must follow. For example, if a county has enacted a land development ordinance, then that ordinance must provide anyone applying for a land development activity with all of the specific requirements that must be met for approval of the activity.

The second part of the equal protection doctrine is that the appeals board must treat citizens that are similarly situated to each other in the same manner, using the same criteria. For example, two separate developers seeking to develop land in the county must have their projects approved or denied based on adopted criteria if the projects are substantially the same.

Understanding and respecting the constitutional rights citizens possess is vital in establishing citizen acceptance and trust in administrative decisions. It is the responsibility of every board member to ensure that their decisions are based on specific requirements contained in the local ordinances and regulations governing activity in the county. 



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