Conduct of Meetings 101

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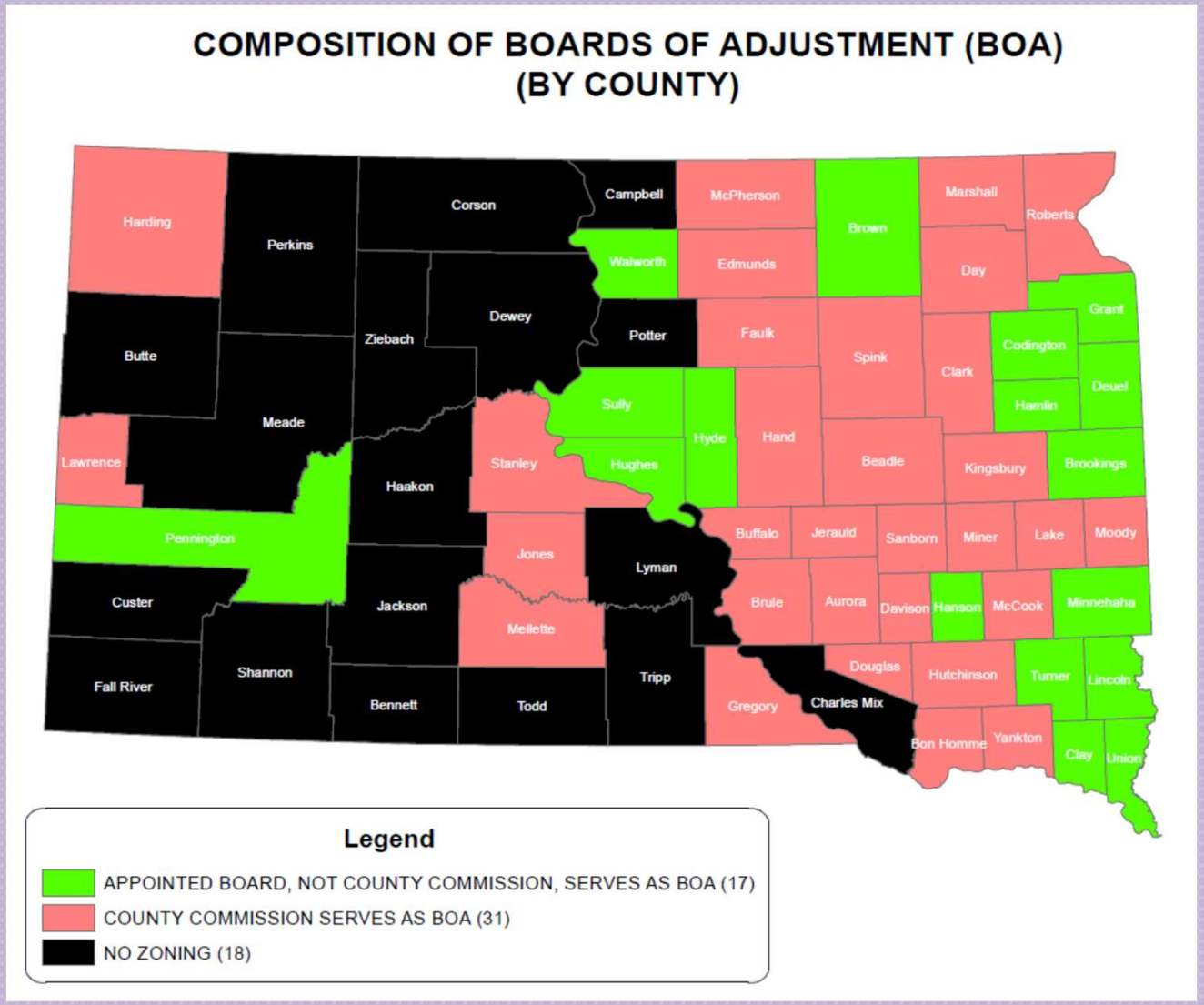
GOALS OF A WELL RUN MEETING…

It's not that the decision you make must be correct, but each decision you make must be correctly made.

- To facilitate the transaction of business
- To promote cooperation and harmony
- To ensure that all members have equal rights, privileges, and obligations
- Ensure the majority has the right to decide, but the minority has rights which must be protected as well
- Rules that limit, guide and protect the individual
- Protect the rights of the minority

TYPES OF MEETINGS

- County Commission
- Board of Adjustment
- Planning Commission



Before the Meeting

- Establish By-Laws
- Establish Quorum
- Prepare Agenda

FORMAT

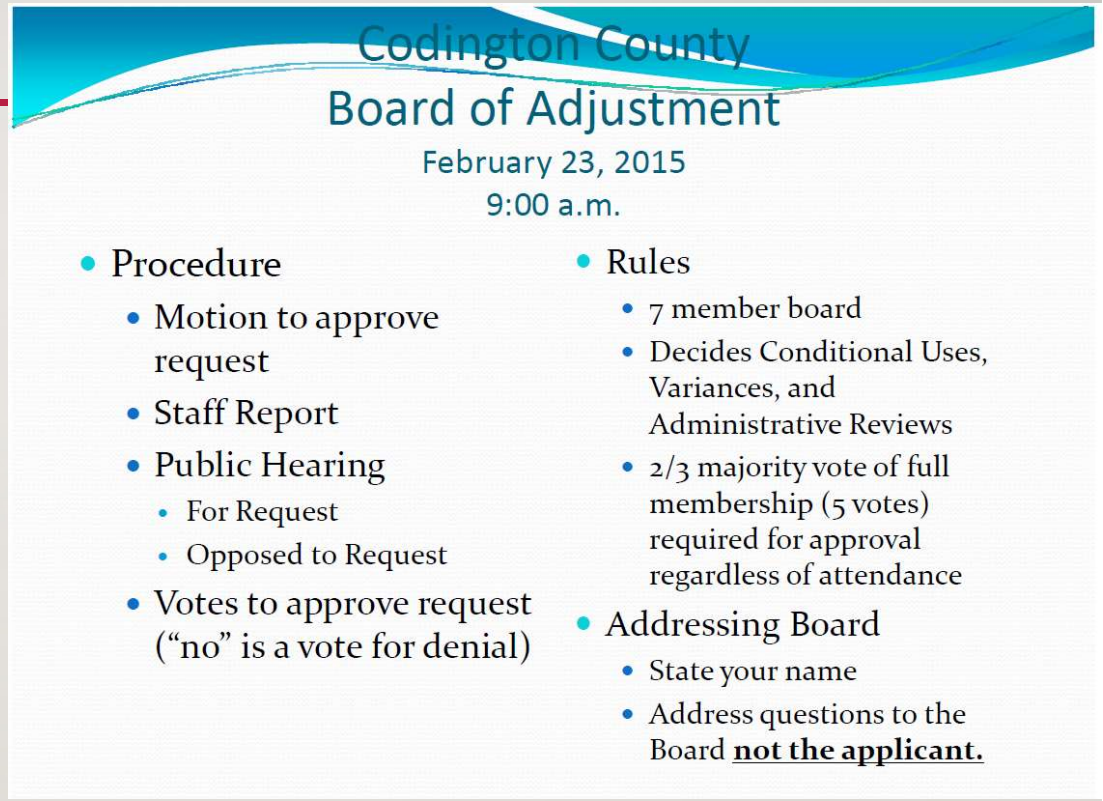
- Model Agenda
  - Call Meeting to Order
  - Approval of Minutes
  - Items to be added to the Agenda by Board of Staff
  - Notification by Property Owner of Intent to Address the Board on Open
  - Approval of Agenda
  - Disclosure of Conflicts/Ex parte Communication
  - Appeals/Conditional Uses/Variances (New Business)
  - Open
  - Matters for Board Discussion
  - Staff Report
  - Adjourn

FORMAT

- Before the Meeting:
  - Create separate agendas
    - Clearly adjourn from Board of Adjustment, then open Planning Commission
  - Publish public notice on conditional uses, variances and appeals at least 10 days prior to meeting
  - Send letters (notice) to adjacent landowners for specified requests at least 10 days prior to meeting
  - Post signs on property at least 10 days prior to meeting
  - Application material is a matter of public record
    - 1-27-1 – any interested person or citizen can examine and make copies of public records during regular business hours
  - SDCL 1-27-1.16 Staff reports or other information submitted for the record should be available to the public 24 hours prior to the meeting or upon distribution to the Board whichever is ***later.***

FORMAT

- At the Meeting
  - Call Meeting to order
  - Explain key rules of conduct
    - In the form of a declaration by the chairman or staff
    - A powerpoint slide, handout, or poster identifying procedure



FORMAT: DECISION PROCESS

- At the Meeting (continued)
  - Address one item at a time
    - Can be listed as "Jim Smith's Application" but address each variance and conditional use with separate motions.
    - Example (Gravel pit attempting to mine up to the right of way)
  - Motion to Approve (before any discussion)
    - Motion ALWAYS in the affirmative.
    - "Jim Smith has an application to _____. I need a motion to approve the request before I can open the public hearing on this matter."
  - Review of request by staff
    - Where and what is the request?
    - How is the request related to your ordinance/Comp Plan? Why couldn't staff approve this?
    - What is the history of the board regarding similar requests?

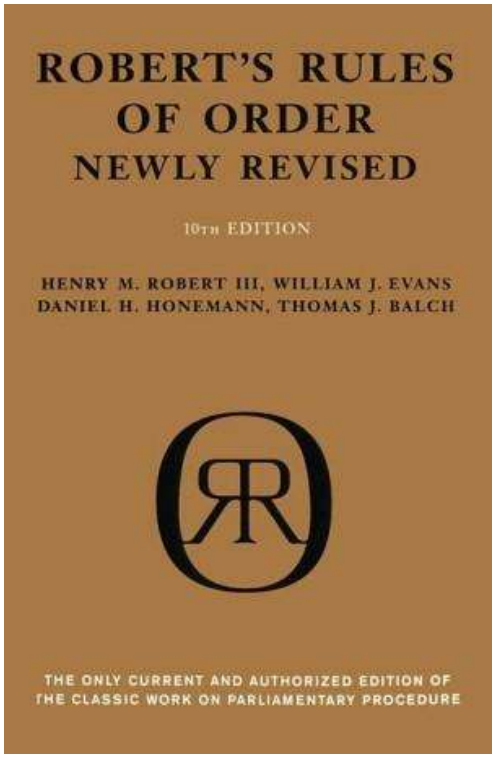
FORMAT: DECISION PROCESS

- At the Meeting (continued)
  - Open Public Hearing
    - Allow applicant testimony
    - Allow proponent testimony
    - Allow opponent testimony
    - ALL COMMENTS ARE DIRECTED TO THE BOARD, the Board will ask questions following testimony
  - Close Public Hearing
  - Board Discussion
    - Discuss testimony and ask questions of staff, applicant, proponents, opponents
    - Make amendments/specify conditions and findings
  - Vote
    - Requires 2/3 majority of full board for variances and administrative decisions
    - Requires 2/3 majority of members present and voting for conditional uses

FORMAT: DECISION PROCESS

- After the Meeting
  - Staff Drafts Minutes
    - Available for review for public 10 days after the meeting
  - Findings of Fact filed
    - Include in minutes
    - Prepare and send letter of notification
  - Letter of Assurance Prepared (if applicable)
    - Require to be signed/agreed to within 30 days of drafting of the LOA
    - Record at Register of Deeds or file with permit
  - Board of Adjustment Approves Minute

Parliamentary Procedure Primer



Parliamentary Procedure Overview

- *A detailed review of rules on how to make rules*
  - *Types of Motions*
  - *How to make motions*
  - *Questions that nobody seems to know the answer to*
    - *"We just do this…"*

Classes of Motions

- Main Motions
  - A proposal that the Board take a certain action or an expression of certain views
  - "I move that…" EQUALS "*I propose that…*"
  - Made in the affirmative
  - Made **before** discussion on the item
- Motions that bring a Question back before the Board
- Incidental Motions
- Subsidiary Motions
- Privileged Motions

How to make a motion

- What is a Main motion?
  - A proposal that the Board take a certain action or an expression of certain views
  - "I move that…" EQUALS "*I propose that…*"
- How to address a Main motion
  - Made in the affirmative
  - Made **before** discussion on the item
  - After a second the Chair should restate or ask for the motion to be restated
  - Debate (limited to immediately pending question including subsidiary/incidental motions)
    - Staff
    - Public Hearing
    - Board Discussion
      - Typically the time for Incidental and Subsidiary Motions

Classes of Motions

- Subsidiary motions
  - A motion that is made in an attempt to compel an action by the Board relating to a question OTHER than voting directly on the main motion.
  - Huh?????????
    - Lay on table
    - Postpone
    - Limit debate
    - Refer to committee
    - Amend
    - Previous Question/Call the Question
  - Think you know when to use these?

Table or Postpone

- Motion to Table
  - Temporarily delays the pain until you're ready for it
  - Not debatable
  - Can require 2/3 majority (Must specify in by-laws)
  - When should I?
    - More urgent matters to discuss
    - We will come back to it later this *session* (meeting)
    - **Not to** replace calling the question (see next slide)
- Motion to Postpone
  - Tells everyone when you will deal with the pain
  - Debatable
  - Majority vote
  - When should I?
    - Not prepared to handle at this time AND will run out of time at this *session*
    - Only postponed within or to next session
    - Can specify whether the item will take precedence, or at what time the item will be taken up

Previous Question

[Calling the Question]

- Calls for a vote on the matter being discussed
  - Can be made for all amendments and other subsidiary motions at the same time
- Crying "Uncle!"
- Not debatable
- Requires 2/3 majority
  - Don't forget to vote to vote!!
- When should I?
  - To close debate
  - After a public hearing
    - Warns debate nearly over(as part of by-laws.)

AMENDMENTS

Motions which can be amended

To adjourn (except when it is qualified, or when made in an assembly with no provision for a future meeting)

To grant leave to speak after indecorum

A request of any kind

To take up a question out of its proper order

To suspend the rules

To lay on the table

To take from the table

To reconsider

To fill a blank

Call for the orders of the day

Question of order, and appeal

To object to consideration of a question

Call for a division of the assembly

To grant leave to withdraw a motion

The previous question

To postpone indefinitely

To amend an amendment

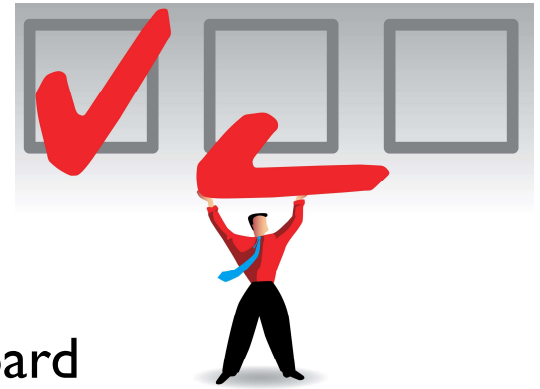
A nomination

Amend or Substitute

- Motion to Amend
  - Suggest a change to the current question
  - Debatable
  - Requires simple majority vote
  - When should I?
    - Feel there is an error in the language of the motion
      - Form or substance
      - Feel there is an error in the language of the motion
    - The main motion is fine, but needs addition or subtraction
    - What if it fails?
      - Main motion remains as originally proposed

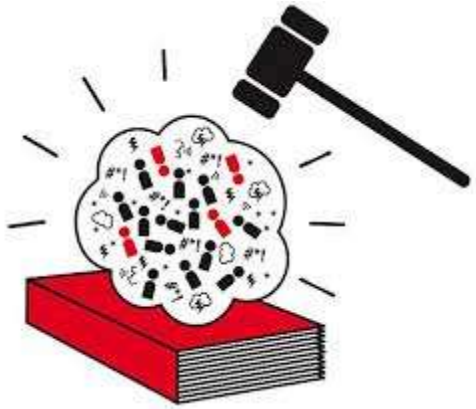
- Substitute Motion
  - *"I have a better idea"*
  - Can be made by **any member**
  - Same rules of vote/debate as original main motion
  - When should I?
    - A motion needs to be overhauled
      - After debate or other discussion
    - What if it fails?
      - **The original main motion is back on the table**

Other Popular Motions: Reconsider



- Brings a decided matter back before the Board
  - *It can be made only on the day the vote to be reconsidered was taken, or on the next succeeding day, a legal holiday or a recess not being counted as a day. It must be made by one who voted with the prevailing side. Not debatable/amendable*
  - *Many have read the above to mean that a decision can be reconsidered at the next MEETING*
- Motion by member of prevailing side/anyone can second it
  - Usually debatable
- When should I?
  - Change a vote/reconsider information
    - Troubling consequences

Other Popular Motions:
Point of Order



- Someone messed up
- Used to point out mistake (typically by chair) in enforcement of rules
- Decided by the chair
- May be appealed to the Board as a whole
  - May be debated at that time
  - Chair may submit the point to the Board without deciding.

Other Popular Motions:

Division of the Question

- Break the Motion into parts
  - Not allowed when considering inter-related topics/rules/by-laws
- Not debatable/amendable
- Simple Majority
- When should I?
  - If a motion is too complex to address altogether
    - Should lead to amendment/handle as amendment as an
  - Practical example:
    - Amendment to a permit is proposed which would add 2 or more conditions

Helpful Links

- http://www.rulesonline.com
- www.parlipro.org
- http://diphi.web.unc.edu/files/2012/02/MSG-ROBERTS_RULES_CHEAT_SHEET.pdf

Ex Parte Communication

Ex parte communication means any material oral or written communication relevant to the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) An interested person outside the Commission or Court (including such person's counsel); and

(ii) The Commissioner or Judge handling that proceeding.

Bias

- "**Direct pecuniary interests**," when an official votes on a matter benefiting the official's own property or affording a direct financial gain;
- "**Indirect pecuniary interests**," when an official votes on a matter that financially benefits one closely tied to the official, such as an employer, or family member;
- **"Direct personal interest,"** when an official votes on a matter that benefits a blood relative or close friend in a non-financial way, but a matter of great importance, as in the case of a councilman's mother being in the nursing home subject to the zoning issue;
- **"Indirect Personal Interest,"** when an official votes on a matter in which an individual's judgment may be affected because of membership in some organization and a desire to help that organization further its policies.

"Unacceptable Risk"

- "Officials [shall] disqualify themselves when they have a business or personal interest in the subject on which they must vote, regardless of whether this interest creates an actual bias." [Hanig]
- "An individual's right to due process includes fair and impartial consideration"
  - "…Not only is a biased decision maker constitutionally unacceptable, but our system of… law has always endeavored to prevent even the probability of unfairness."
- "Thus to prove his hearing was not fair and impartial, *appellants*, **need only show an <u>unacceptable risk</u> of actual bias**."
- "If the circumstances show a likely capacity to tempt the official to depart from his duty [to serve their government and the people, uninfluenced by adverse motives and interests], then the risk of actual bias is unacceptable and the conflict of interest is sufficient to disqualify the official."
- "[Board members should only be expected to recuse themselves] when a reasonably-minded person would conclude that the official's interests in the matter had **<u>the likely potential</u>** to influence his impartiality in its resolution."

WHEN CAN I VOTE?

- WHENEVER YOUR ATTORNEY SAYS SO

Best Practices

- Ask yourself and your state's attorney whether you run the risk of unacceptable bias based on the four types:
  - Direct/indirect pecuniary interest
  - Direct/indirect personal Interest
- Ask yourself or state's attorney if your conflict is different than other members of the common public would have.
- Disclose any potential conflict of interest before the hearing
- Specify the number of votes necessary for approval and any absent or abstaining members prior to the hearing.
- Offer the applicant the opportunity to request the matter be acted upon, tabled or withdrawn with the knowledge of the potential conflict or difficulty in obtaining the number of required votes absent an abstaining member.

What about Constituent Correspondence

HOW CAN I EVER LEAVE MY HOUSE???

- Encourage them to come to the meeting to state their opinions
- Encourage them to submit questions, comments, or opinions to the zoning officer/staff.
- Note that talking to them can jeopardize the validity of any vote you make
- Keep a log of any calls or conversations you had about an issue
- Forward copies of any emails or letters received to staff
  - Staff notes ___ letters in support; ___ in opposition. Those in support cite the following reasons. Those in opposition cite the following reasons. Copies of all letters and emails are available for viewing by the public.
- **Does it appear that** I am getting information someone else from the public could not?
- Make sure you note any conversations relating to the issue before a vote. (Due process)

BEST PRACTICE:
DISCLOSING RELATIONSHIPS

- When the Board of Adjustment member **<u>does not feel</u>** a potential conflict of interest **<u>should result in the abstention</u>** from voting on a specific request it is recommended a statement similar to the following be made:
  - **"*John Smith* is the applicant for Item "x" on the agenda and is married to my third cousin. I do not feel this relationship will bias my decision in any manner regarding this request."**

BEST PRACTICE:
DISCLOSING CONVERSATION

- When the Board of Adjustment member has engaged in discussion but **does not feel it will result in a perceived bias** which should result in the abstention:
  - **"*John Smith* is the applicant for Item "x" on the agenda and spoke with me regarding his application on *date*. I will summarize the discussion prior to testimony regarding this matter. I do not feel this conversation included anything which will not be discussed in the public hearing, nor did it predispose me in my decision in any manner regarding this request."**

BEST PRACTICE:
DISCLOSING RELATIONSHIPS AND CONVERSATION

- When the Board of Adjustment member feels a potential conflict of interest **should result in the abstention**:
  - **"My father, *John Smith,* is a shareholder in the corporation making application in Item "x" on the agenda. This relationship may bias my decision in regarding this request, and therefore I will be abstaining from voting on that item."**
- When the Board of Adjustment member has engaged in discussion regarding a specific request outside of a meeting that **will result in a perceived bias**:
  - **"I attended a private party at *John Smith's* residence 3 days after he made application for Item "x" on the agenda and spoke with him regarding his application. I feel this conversation may have included information which will not be discussed in the public hearing, and may have predispose me in my decision regarding this request."**

BEST PRACTICE:
DEBATING BIAS/HOW TO ABSTAIN

- If another member of the Board of Adjustment feels the potential conflict should result in the abstention of the above referenced member it is recommended a statement similar to the following be made:
  - **"Point of order" ["State your point"** – by Chairperson**] "Member *Jones*' relationship will bias her decision on this request."**
- The Chairperson shall then rule if the relationship should result in the member abstaining. The Chairperson may consult with staff or the State's Attorney prior to making the decision. The decision of the Chairperson may be appealed by the members Board of Adjustment in accordance with Robert's Rules of Order.
- Any member abstaining from voting on a specific item shall note such abstention prior to the motion to approve the request, leaving his/her seat to be replaced by the alternate (if applicable).

What about site visits?

- Supreme Court has not weighed in on question of site visits needing notice.
- **Does it appear that** I am getting information someone else from the public could not?
- Have planning and zoning staff conduct site visits and take pictures.
- Be careful when conducting site visits or when talking to one side or another.
- Send a letter to both sides when commissioners are conducting a site visit or meeting with one side notifying of the time and place.
  - Make sure to state that information obtained during the site visit will be made a part of the record and used in the commission's decision.

PUBLIC HEARINGS

FORMAT: PUBLIC HEARING

- Call to attention that this is an open public hearing
- Explain the process of a public hearing
  - Announce the method of record keeping (written, audio, video, etc)
  - Explain the basic subject of the hearing
  - Introduce the Board, staff applicants
  - Explain entire citizen participation process and meeting procedure (previous meeting, staff report, applicant presentation, public comment….)

FORMAT: PUBLIC HEARING

- Explain the process of a public hearing (cont)
  - Board/Staff shall be permitted to ask questions to clarify motions or items brought out at hearing
  - Everyone who wishes to speak will be allowed to do so

- Rules for Comment
  - If there is a large group – sign up is a must
  - State whom you are representing
  - Before speaking, state your name and address for the record

FORMAT: PUBLIC HEARING

- Rules for Comment (cont)
  - Time Limit
    - Respect others' time
    - One doesn't have to speak full time
    - Don't allow giving time to others
    - Consider allowing (brief) time at end of hearing to conclude unfinished comments
    - Each person is accountable for what they say
      - No personal attacks
      - Keep to merits of case
  - All statements and questions shall be directed to the chairperson

FORMAT: PUBLIC HEARING

- Rules for Comment (cont)
  - All Statements should be as factual as possible
  - Please refrain from repeating what has been said
  - The Board/Commission reserves the right to question any speaker
- Staff will furnish Board/Commission with all pertinent information regarding request
- The applicant and/or representative will then comment on the request
- Those in support of the request will testify
- Those opposed to the request will then testify

FORMAT: PUBLIC HEARING

- All comments, questions, etc are to be directed to the Board
- Comments will then be taken from those wishing to provide additional testimony
- The applicant will then have the opportunity to answer questions
- All other testimony such as petitions, written comments, maps, drawings, photos, and other information will be made part of the hearing record
- Adjourn the hearing

FORMAT

- After the close of the public hearing, no additional testimony may be offered, except those comments in response to questions from the Board/Commission.
  - Announce the next step in process
  - Summarize and review comments
  - Ask pertinent questions posed by public during public hearing
    - Have staff compile questions and distribute for Board members to ask questions
  - Announce the availability of the documents for public inspection

DECISION

THE DECISION

- What do call people who exercise discretion freely?

- DEFENDENTS

THE DECISION

- Procedure
  - The United States Constitution states two rights that must be safeguarded during the decision making process
    - Equal Protection of the Law – The law must be applied fairly and equal to all persons in all circumstances
    - Due Process of the Law – Encourages objective decision making
      - Notice
      - Opportunity to be heard
      - Findings of Fact
      - No conflict of interest
      - Prompt decisions
      - Records of the proceedings

THE DECISION

- Voting should be in the form of a simple "yes/no" roll call vote with members giving no reasons for their vote at this time.
- The Decision
  - Is based on fact
  - Is consistent with other similar decisions
  - Is based on the comprehensive plan, zoning and subdivision ordinances and maps
  - Addresses the major issue
  - Is best for the whole community

THE DECISION

- State the Findings of Fact
  - Summation of reasons and findings should be stated and made clear in the discussion preceding the vote
  - Make the Motion
    - Simply a summation of the facts and consensus. All factors on which a decision is based must be brought into the decision of the Board/Commission so that there is an opportunity for the applicant to comment. Once all comments have been stated, a summation of these should be proposed in the form of a motion by a Board/Commission member.

THE DECISION

- Generate Findings of Fact
  - Leave burden on applicant to explain how standards are met in application
  - The Board determines findings of fact based upon history, standards, and other policies
    - "Have we satisfied *this* requirement?"
  - Have standards in front of the [board]/have [board] ask specific questions to elicit evidence related to standards
  - Explicitly deliberate the facts and relationship to standards following public comment period
  - Use minutes to reflect the conclusions/findings
    - Clock on appeals is delayed, thus project is delayed until findings are filed with the approved minutes

THE DECISION

- The zoning ordinance should state a specific time limit within which application for appeals must be made.
  - Appealed to whom?
    - Appeal to Circuit Court
  - Time limit – State law is 30 days for Board of Adjustment decisions to Circuit Court
- Appeals of Board of Adjustment may be a review of the record only.

CONDITIONAL USES FINDINGS:

- Important for court review of the record
- Declaration that the Board of Adjustment is authorized to issue the permit
- Public notification of reasons for decision
- Ensure decision is not arbitrary and/or capricious

CONDITIONAL USES CONDITIONS/EXPIRATION/ REVOCATION:

- Conditional use / variances must be used within prescribed time
- The county may revoke a permit after a hearing and notice in the event of a violation.
- Conditions may be prescribed for conditional uses:
  - Must be germane to the issue
  - Remember what was said earlier about discretion
    - Must be uniformly required
  - Rely on staff to give the history

Thank You!

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