

15.5 GENERAL REQUIREMENTS FOR QUASI-JUDICIAL HEARINGS AND DECISIONS

A quasi-judicial decision is a process that involves the finding of facts regarding a specific application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special use permits, and appeals of administrative determinations. In accordance with G.S. 160A-393, decisions on the approval of site plans and subdivisions are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the application based on one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board. As a result the following standard procedures shall be incorporated as appropriate.

15.5.1 STANDARDS FOR CONDUCT OF QUASI-JUDICIAL HEARINGS

- A. Contact with Decision-Making Board Members:** Contact with any members of a decision-making board prior to the public hearing by any individual regarding the matter is prohibited.
- B. Conflicts of Interest:** A member of the decision-making board shall not participate in or vote on a quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.
- C. All Participants to be Sworn In:** All participants in the public hearing shall be duly sworn in prior to the submission of any testimony.
- D. Competent Evidence Required:** All decisions shall be based on competent evidence entered in as part of the record. The term "competent evidence," as used in this subsection, shall not preclude reliance by the decision-making board on evidence that would not be admissible under the rules of evidence as applied in the trial division of the General Court of Justice if (i) the evidence was admitted without objection, or (ii) the evidence appears to be sufficiently trustworthy and was admitted under such circumstances that it was reasonable for the decision-making board to rely upon it. The term "competent evidence," as used in this subsection, shall not be deemed to include the opinion testimony of lay witnesses as to any of the following:
 - 1. The use of property in a particular way would affect the value of other property.
 - 2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
 - 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- E. Cross-Examination Permitted:** The cross-examination of witnesses submitting testimony shall be permitted upon request.

15.5.2 STANDARDS FOR DECISIONS

Each decision-making board under the provisions of this section shall ensure that the rights of petitioners have not been prejudiced because of the decision-making body's findings, inferences, or conclusions. In addition such decision shall not be:

- A.** In violation of constitutional provisions, including those protecting procedural due process rights.
- B.** In excess of the statutory authority conferred upon the town or the authority conferred upon the decision-making board by ordinance.

- C. Inconsistent with applicable procedures specified by statute or ordinance.
- D. Affected by other error of law.
- E. Unsupported by substantial competent and material evidence in view of the entire record.
- F. Arbitrary and capricious.

15.5.3 RECORD OF DECISION

- A. The following shall become part of the official record of decision:
 - 1. Documents and exhibits submitted to the decision-making board
 - 2. Meeting minutes
- B. **Transcript of Audio/Video of Meetings:** Any party may request, at their expense, a transcript of the proceedings from any recorded audio/video.