Conduct of Meetings 101

October 25, 2023

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Who are we?

Not attorneys

South Dakota PLANNING DISTRICTS MAP



HOW ITHINK IT'S GOING



HOW IT'S ACTUALLY GOING



HOW'S IT GOING?

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



- Establish By-Laws
- Establish Quorum
- Prepare Agenda



FORMAT

Model Agenda

- Call Meeting to Order
- Approval of Minutes
- Items to be added to the "Open" by the public (establish rules)
- 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 (Old Business/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
 - If meeting via teleconference/zoom: include login info or manner to get login info in notice
- 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
 - I-27-I 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 chairperson or staff
 - A powerpoint slide, handout, or poster identifying procedure

Call to Order

a. Chairperson – "Seeing we have a quorum of Board members in attendance, I will call this Joint meeting of the Codington County Planning Commission and Board of Adjustment to order. For all in attendance, welcome and thanks for attending, but please silence your cell phones." Please note, as a matter of policy, all motions are made in the affirmative before discussion of any sort is held and is subject to the recommendations of staff as read at the meeting. Unless otherwise mentioned, following staff review of each request, the applicant will have up to 15 minutes to address the Board, then any additional individuals wishing to testify in favor or opposition of the request will have 3 minutes to address the Board. Always remember all testimony is to be directed to the Board. If questions arise from testimony which are relevant to the ordinance or land use plan, staff or Board members ask them following testimony. Finally, for Conditional Use Permits a simple majority of the members of the Board of Adjustment present and voting is required to approve any request. For variances and appeals, it takes five (5) members of the Board to approve the request or appeal, regardless of the number of Board Members in attendance."

Codington County

Board of Adjustment

February 23, 2015 9:00 a.m.

- Procedure
 - Motion to approve request
 - Staff Report
 - Public Hearing
 - For Request
 - Opposed to Request
 - Votes to approve request ("no" is a vote for denial)

- Rules
 - 7 member board
 - Decides Conditional Uses, Variances, and Administrative Reviews
 - 2/3 majority vote of full membership (5 votes) required for approval regardless of attendance
- Addressing Board
 - State your name
 - Address questions to the Board <u>not the applicant.</u>

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

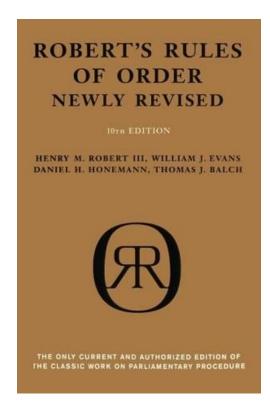
- At the Meeting (continued)
 - Open Public Hearing
 - Combine hearing if 2 related applications by same applicant/same property (Chair discretion)
 - Example: Gravel Pit Permit and Variance to Setback;
 - Allow applicant testimony
 - Allow proponent testimony
 - Allow opponent testimony
 - ALL COMMENTS 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 appeals
 - · Requires 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 Minutes



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 <u>before</u> 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 <u>before</u> 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

e 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:

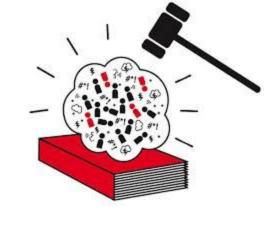
Reconsider

- 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.





- 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





- Allows you to break from protocol
- Not debatable/amendable
- Super Majority (usually)
 - Can be handled by general consent
- When should I?
 - Following the rules makes running the meeting impractical
 - Use sparingly
 - Practical example:
 - Take an item on the agenda out of order
 - Item on the agenda with "discussion and possible

Other Popular Motions:

Appeal

- The chair made a mistake on a decision/ruling
 - Not to be used to correct facts during a debate
 - Stand immediately after the decision/ruling is made and state the appeal (can be done while someone else has the floor
- Not debatable/amendable
- Majority (including chair)
- When should I?
 - Practical example:
 - Chair interpreted general consent while someone was still thinking
 - Chair over exerted discretion on a matter



- http://www.rulesonline.com
- www.parlipro.org
- http://diphi.web.unc.edu/files/2012/02/MSG-ROBERTS_
 RULES CHEAT SHEET.pdf

Zoning In Court/Bias and Board Members

- Hanig vs Winner (SD Supreme Court)
- Armstrong vs Turner County (SD Supreme Court)
- Hanson vs Minnehaha County (Circuit Court)
- Holburn vs Deuel County (SD Supreme Court)
- Johnson vs Codington County (Circuit Court)

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.

Conflict of Interest/Ex parte Communication: Hanig vs City of Winner

- Liquor license renewal applied for to operate a steakhouse and lounge with City Council
- One council member is a waitress at a competitor's steakhouse
 - Council member's boss spoke to her and wrote her a letter urging denial of the liquor license
- City denies liquor license renewal

The Supremes on the Due Process Question:

- "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, Hanig, need only show an unacceptable risk of actual bias."

Conflict of Interest/Ex parte Communication: Hanig vs City of Winner

The Supremes on the Conflict of Interest Question:

- "We can glean... that 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."
- "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."
- The state supreme court quoted the Iowa Supreme Court with regard to "Quasi-Judicial Boards:"

Under the common law, officials exercising quasi-judicial powers [are] disqualified or incompetent to sit in a proceeding in which [they have] prejudged the case, or in which [they have] a personal or pecuniary interest, where [they are] related to an interested person within the degree prohibited by statute, or where [they are] biased, prejudiced, or labor [] under a personal ill-will toward a party.

When can I vote?

The interest must be different from that which the quasi-judicial officer holds in common with members of the public... In addition, such interest must be "direct, definite, capable of demonstration, not remote, uncertain, contingent, unsubstantial, or merely speculative or theoretical."

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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.

Legislative Retort

- <u>6-1-17</u>. Official prohibited from discussing or voting on issue if conflict of interest exists--Legal remedy. No county, municipal, or school official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:
- (1) The official has a direct pecuniary interest in the matter before the governing body; or
- (2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.

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 unacceptable risk 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 the likely potential to influence his impartiality in its resolution."

Conflict of Interest/Ex parte Communication: Armstrong vs Turner County

- Permit mistakenly issued without CUP for elevator.
- CUP applied for and denied
- CUP request amended and applied for
- New Board member had attempted to mediate solution prior to being a board member and made known county's concerns of cash expended after permit mistakenly issued.
- New Board member made motion to approve
- Board ultimately approved request with conditions (following a writ of certiorari) from neighbors.

Armstrong continued...

- Board member as a county commissioner made contact with both homeowners and the attorney for the elevator to negotiate a settlement.
- South Dakota Supreme Court looked to the Administrative Procedures Act and found bias and that commissioner should have disqualified himself.
- Motive was different from that of a member of the public.
- Chief Justice Gilbertson concurring argued that wearing two hats or constituent contact is not ex parte communication or a disqualifying interest.
 - "[Board members should only be expected to recuse themselves] when the officials authority, statements, or actions regarding the issue while serving in one role create an unacceptable risk of bias when serving in the other... i.e. when a reasonably-minded person would conclude that the official's interests in the matter had the likely potential to influence his impartiality in its resolution."

Conflict of Interest/Ex parte Communication: Armstrong vs Turner County

Decision reversed and remanded back to the Board of Adjustment based on violation of Due Process

"[Board member]
attempted to orchestrate a
plan [to] avoid a lawsuit...
then voted as a member of
the Board of Adjustment to
put this plan into action."

What we learned from: George Holborn, et al v. Deuel County Board of Adjustment, et al, CIV 18-19; 2021 S.D. 6

- Upheld Votes of:
 - Employer has wind easement/payments
 - Has transmission agreement with different wind company
 - Noted general support for wind in public
 - Minority owner in company that could make wind tower components
 - 2 members <u>WERE</u> signed up for easement with applicant and had received payment in the past from applicant
 - Unacceptable risk of bias
 - Irrelevant that they are no longer receiving payment

What we learned from: George Holborn, et al v. Deuel County Board of Adjustment, et al, CIV 18-19; 2021 S.D. 6

- 2 members were signed up for easement and had received payment:
 - · Originally disqualified by Circuit Court
 - Supreme Court re-instated their votes.
 - Leaned more heavily on the word "unacceptable" than "risk of bias"
 - "There is no evidence that any Board member stood to financially benefit, directly or indirectly, from the approval of the [Conditional Use Permit]"
 - "Prior payments were not extraordinary in amount and were calculated using a per-acre payment terms... applied in... agreements with the landowners of other properties."
 - Relied on US Supreme Court Case involving a judge in Pennsylvania where an exorbitant amount of money was contributed to the judge's election campaign from a defendant with a case pending before the would-be-judge.

What we learned from: George Holborn, et al v. Deuel County Board of Adjustment, et

- Prescribing an orderly procedure or time limits <u>does</u>
 <u>not</u> deprive individuals of due process
- Board performing its duties in past cases <u>does not</u>
 <u>create</u> <u>bias</u> (<u>Pulling over everyone</u> that drives on a sidewalk)
- Failure to read/review EVERY piece of written material (518 pages) submitted <u>does not</u> indicate bias
- Can vote, prepare findings, and make permit effective date start upon agreement to conditions (LOA)
- Special Exceptions ≠ Conditional Uses (approval)

What we learned from: Johnson v. Codington County Board of Adjustment

Writ of Certiorari ONLY on conditional use permits

Judge gives credence to by-laws. Adopt them, follow them

Disclosure of potential conflicts of interest = good

Be thorough in your hearing/review

- Ask questions brought up during the hearing
 If there is a problem/discrepancy; address it
 Ask questions about the application
 Participate in discussion about application

What we learned from: Johnson v. Codington County Board of Adjustment

 The Purpose and Intent statements are largely for the commissioner and Planning Commission to consider in adopting the [rest of the] ordinance.

Here, one of the objectives of the County's adoption of the Ordinance is "[t]o prevent excessive population densities and overcrowding of the land with structures." Writ Ex. A1, at 2. Another objective is "to protect and to promote the public health, safety, peace, comfort, convenience, prosperity and general welfare." *Id.* Contrary to Petitioners' assertions, these objectives are clearly not elements or factors the Board must expressly find in making every and any CUP decision for a WES project. *Id.* Moreover, the record reflects that the Board considered information about tower placement and determined that such placement complied with the Ordinance. Bd. Brief at 29-30; CR Brief at 3, 23; Writ Ex. A1, at 114-16; Writ Ex. F, at 1.17

When can I vote?

•WHENEVER YOUR ATTORNEY SAYS SO

Conflicts of Interest in Quasi-Judicial Proceedings

- How is the determination made?
 - Be aware of the types of conflict
 - Potential conflicts should be made known to the entire board
 - DISCLOSE, DISCLOSE, DISCLOSE...
 - Establish a manner of settling whether a recusal should happen in your by-laws — leave option for BOARD to vote.
 - What if someone votes that DID have a conflict of interest?
- Give Notice of POTENTIALLY PERCIEVED Conflicts
 - Allow the lodging of objections, but decision ultimately rests with the Board.

Ex Parte Contact in Quasi-Judicial Proceedings

- What if ex parte communication occurs?
 - **♦ DISCLOSE, DISCLOSE...**
- Does ex parte communication require recusal?
 - Legislative
 - Do legislators recuse themselves if a constituent calls them?
 - Do legislators recuse themselves on bills that could increase/decrease their taxes?
 - Quasi-Judicial
 - Invited
 - Uninvited

Section 3: Best Practices for Board Members

From the perspective of a staff member and a Board Member

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.
- ♦ <u>Does it appear that</u> 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 does not feel a potential conflict of interest should result in the abstention 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 <u>does not feel it will</u> <u>result in a perceived bias</u> 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 <u>should result in the</u> <u>abstention</u>:
 - "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.
 - Anake 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.

KEY RULES FOR BY-LAWS

AUTHORITY AND JURISDICTION

- What gives this Board the Authority to Act?
 - State Law (11-2-2) allows Commissioners to Appoint a Planning Commission
 - State Law (11-2-49) allows Commissioners to Appoint Planning Commission as Board of Adjustment



- State Law (11-2-60) allows Commissioners to Appoint themselves as Board of Adjustment
- Reference (county) Ordinance that gives authority to Board of Adjustment to handle Variances, Conditional Use Permits, and Appeals
- What part of the county it applies to (all except for municipalities) (Joint Jurisdiction Areas, Contracted muni's.)

APPOINTMENT/TERMS/DUTIES

- How are members appointed
 - Recital of requirement for alternates
 - Specify that all members are voting members
 - Specify how officers are appointed
- Describe Appointment Term
- Describe Duties for key members (Board and staff)
 - Chair, Vice Chair
 - Other Board Members
 - Administrative Official, Attorney, Auditor, etc... (if necessary)

GENERAL MEETING RULES

- Regular meeting schedule
 - (day/week/month/time/place)
 - Work sessions/special meetings
- Rules on quorum, adjournment, and executive session.
- Rules on attendance for members (number of meetings expected.)

STANDARD AGENDA

Section 6.2: Items to be included in Agenda.

- Call Meeting to Order (See Section 6.3)
- Approval of Minutes (See Section 6.4)
- Items to be added to the agenda by Board members or staff under matters for Board Discussion (See Section 6.7)
- Declaration of intent by members of the public to address the Board during the Open Session (See Section 6.6)
- Disclosure of Conflicts of Interest; Relationship(s) to Applicant; or Ex Parte Communication (See Section 6.5)
- Approval of the Agenda
- Appeals/Conditional Uses/Variances (See Article 9)
- Open (See Section 6.6)
- Matters for Board Discussion (See Section 6.7)
- Staff Report (See Section 6.8)
- Adjourn

SPECIAL RULES FOR BOARD OF ADJUSTMENT

- Sometimes Robert's Rules don't jive with due process requirements and state law. Use this to fill in the blanks.
 - The Chairperson is authorized to suspend the rules for meetings of the Board of Adjustment after stating cause for such suspension.
 - Appeals to said suspension may be made in accordance with Robert's Rules of Order.
 - Tabling:
 - No matter may be tabled to a later date. If it is the intent to delay a vote to a later meeting, a motion to postpone shall be used. (See "postponing")
 - Any matter tabled shall be removed from the table at the same meeting.
 - · Postponing:
 - Any motion to "Postpone Indefinitely" shall be ruled out of order when made in reference to any provision of an application before the Board of Adjustment.
 - No provision relating to an application before the Board of Adjustment may be postponed beyond the date of the next scheduled regular meeting of the Board of Adjustment unless postponed pending a specific action/event or referred to a committee.
 - Reconsideration:
 - Any decision of the Board of Adjustment may be reconsidered in accordance with Robert's Rules of Order at the same meeting in which the original decision was made.

RULES FOR PUBLIC: GENERALLY

- Public is to sign in; indicate their intent to testify; which side (proponent/opponent/neutral)
- Cell phones silenced
- Process for testimony
 - · Call individual by name
 - Testify into a microphone, directly to the Board.
- Private conversations to be held outside the meeting
- This is not a pep rally
- These rules are a bond, I WILL KICK YOU OUT!

RULES/PROCESS FOR VARIANCE AND CONDITIONAL USE HEARINGS

- Motion to approve the application
- Staff presents report/summary/recommendations
- Formal opening of the public hearing
- Testimony by applicant
 - Establish time limit (recommend 10 15 minutes)
- Testimony by other governmental entities
 - School Board/Township/Municipality/Utilities
 - Establish Time Limit (slightly more than general public)

- Rest of public testimony
 - Proponent testimony; Opponent testimony;
 Neutral testimony (in that order)
 - All comments directed to the Board
 - Repetitive testimony discouraged (time limit)
 - No dialogue between person testifying and applicant
 - Staff calls names of individuals to come up
 - 3-5 minute max per person (no sharing time)
 More time if representing a group
 - Other individuals do not speak
 - Individuals that did not indicate an intent to speak on the sheet will be allowed I minute
 - Written testimony is referenced and summarized by staff

RULES/PROCESS FOR VARIANCE AND CONDITIONAL USE HEARINGS

- Public hearing is closed
- Board discussion
 - Applicant called back up to answer questions posed by the Board (including those applicable questions from the audience)
 - Board discusses application, rules, past permits, etc.
 - Amendments to conditions/motions may be made
 - Board is questioned in reference to findings of fact
 - (lack of response is assumed agreement/satisfaction)
- Roll call vote

RULES/PROCESS FOR APPEALS OF ADMINISTRATIVE DECISIONS

- Motion to approve the appeal (side with applicant/appellant)
- Chair/County's Attorney/County staff describe the hearing and introduce the appeal
- Open public hearing
 - This is a "hearing in the public" (more like judicial proceeding - not obligated to take testimony from anyone other than applicant)
- Testimony by appellant
 - Establish time limit (recommend establishing a max per appeal)
 - 15 minutes for first appeal
 - 10 minutes for each additional appeal

- Written testimony is referenced by the chair or county's attorney (if not previously addressed.)
- Public hearing is closed
- Board discussion
 - Appellant is asked questions by the Board
 - Board may question others in attendance (including zoning officer)
 - Board discusses applications, policy, history, etc.
 - Amendments may be made
- Roll call vote

SUBMISSION OF WRITTEN DOCUMENTS

- Establish deadline for applications
 - Keep in mind publication deadlines, work flow, staffing, your time for review...
- Establish deadline for submittal of written testimony for the public hearing
 - Give public time to prepare
 - Give Board time to review
 - Give applicant and rest of public time to review
 - Any written testimony intended for delivery at the meeting will be discarded and may only be included into the record if read out loud and does count toward allotted time of testimony.
 - Exception: Petitions may be submitted at the meeting provided the content of the petition is read by the person submitted it according to the rules for public testimony.

INSTRUMENTS AND DOCUMENTS OF THE BOARD

- Identify various types of documents which may be part of the record
- Identify who is responsible for preparation of those documents
- Identify who is responsible for keeping track of them.

STANDARD FINDINGS OF FACT

- Establish separately for Conditional Uses and Variances
- Have available for public view at meeting
- Establishes statutory and ordinance authority to review the request
- Establishes that required notices, hearings, etc. were held
- Establishes the requirements of all Conditional Uses or Variances were met (enumerate all of them)
- Establishes how other general statutes and procedures are being met
- Eliminates the need for repetitive questioning during the hearing and focuses on details unique to the specified variance/conditional use.

CONDUCT OF MEMBERS OF THE BOARD

- Identify the objective to represent the Ordinance duly established by the County
- Identify general qualifications of the Board
- Identify deadline for notification of not being able to make a meeting
- Other rules...

SEVERABILITY AND AMENDMENTS

Severability

- Each section/rule is judged on its own merits and determining one to be illegal doesn't make the whole set of rules illegal
- Amendments
 - Process for amendments

DECISION TIME

DECISION



 What do you call people who exercise discretion freely?

DEFENDANTS

Thank You!

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