

# Planning Board Basics

## Supplemental Materials

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Note to users:

The document that follows includes some adaptations of handouts and other information prepared by David W. Owens, Professor of Public Law and Government in the School of Government at the University of North Carolina at Chapel Hill. He has granted the North Carolina Department of Commerce, Division of Community Assistance (DCA), Western Regional Office (WRO), permission to use his materials for training purposes.

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## Types of Zoning Decisions

Zoning decisions can be grouped into four categories: legislative, quasi-judicial, advisory, and administrative. Often the body charged with making the decision varies according to the type of decision involved. Governing boards usually make legislative decisions but can also make quasi-judicial decisions. Planning boards usually make advisory decisions but can also make quasi-judicial decisions. However, more important than which *board* is making the decision, the rules that must be followed change depending on the *type* of decision involved, and these rules apply no matter which board is making the decision. Therefore knowing the type of decision is vital to determining what decision-making process should be used.

**Legislative zoning decisions** affect the entire community by setting general policies applicable through the zoning ordinance. They include decisions to adopt, amend, or repeal the zoning ordinance. The zoning map is a part of the zoning ordinance, so amending the map to rezone even an individual parcel is considered a legislative decision. Because legislative zoning decisions have such an important impact on landowners, neighbors, and the public, state law mandates broad public notice and hearing requirements for these decisions. Broad public discussion and careful deliberation are encouraged and substantial discretion on these decisions is allowed. These decisions are generally made by the local government body, which "legislates" or sets policy.

**Quasi-judicial decisions** involve the application of zoning policies to individual situations. Examples include variances, special- and conditional-use permits (even if issued by the governing board or planning board), appeals, and interpretations. These decisions involve two key elements—the finding of facts regarding the specific proposal and the exercise of judgment and discretion in applying predetermined policies to the situation. Since quasi-judicial decisions do not involve setting new policies, the broad public notice requirements that exist for legislative zoning decisions do not apply. However, the courts have imposed fairly strict procedural requirements on these decisions in order to protect the legal rights of the parties involved. Quasi-judicial decisions are most often assigned to boards of adjustment, appointed by the governing board. But these decisions can also be assigned to the planning board or to the governing board itself.

**Advisory decisions** are made by bodies that may recommend decisions on a matter but have no final decision-making authority over it. The most common example is the advice on rezoning petitions given by planning boards to the city council or board of county commissioners. As of January 1, 2006, state statutes require that planning boards provide governing boards with written comments on the consistency of proposed zoning amendments with comprehensive and other locally adopted plans.

**Administrative decisions** are typically made by professional staff in various government departments. Such decisions cover the day-to-day non-discretionary matters related to the implementation of a zoning ordinance, including issuing basic permits, interpreting the zoning ordinance, and enforcing it. Examples include issuing a certificate of zoning compliance for a permitted use or a notice of violation. These decisions may be appealed to the board of adjustment.

## Local Government Planning Participants and Types of Decisions

<u>Agency</u>	<u>Primary Role</u>	<u>Other Possibilities</u>
<b>GOVERNING BOARD:</b> (city council, county board of commissioners)	<i>Legislative decisions:</i> adopts ordinances, amendments, policy statements, budgets; approves acquisitions; makes appointments to other bodies.	May also serve as planning board; may serve as board of adjustment; may approve subdivision plats and special or conditional use permits.
<b>PLANNING BOARD:</b> (planning board; planning commission; planning committee of governing board)	<i>Advisory decisions:</i> sponsors planning studies; recommends policies, advises governing board; coordinates public participation; must recommend initial zoning ordinance; must review zoning amendments to determine consistency with the comprehensive plan and any other relevant plans.	May also serve as board of adjustment; may approve special use permits; may approve or review subdivision plats.
<b>BOARD OF ADJUSTMENT:</b>	<i>Quasi-judicial decisions:</i> hears zoning appeals, variances, special or conditional use permits.	May also serve as planning board; may advise governing board on need for zoning ordinance amendments.
<b>STAFF:</b> (planning department, inspections department, community development department)	<i>Administrative decisions:</i> issues permits, conducts technical studies, initiates enforcement and monitoring; advises manager.	May also approve subdivision plats.

## Some Key Differences between Legislative and Quasi-Judicial Zoning Decisions

	<b>Legislative</b>	<b>Quasi-Judicial</b>
<b>Decision-maker</b>	Only governing board can decide (others may advise)	Can be board of adjustment, planning board, or governing board
<b>Notice of hearing</b>	Newspaper, and, for map amendments, mailed notice to owners and neighbors and on-site posting of property required	Only notice to parties required unless ordinance mandates otherwise
<b>Type of hearing</b>	Legislative	Evidentiary
<b>Speakers at hearings</b>	Can reasonably limit number of speakers, time for speakers	Witnesses are presenting testimony, can limit to relevant evidence that is not repetitious
<b>Evidence</b>	None required; members free to discuss issue outside of hearing	Must have substantial, competent, material evidence in record; witnesses under oath, subject to cross-examination; no ex parte communication allowed
<b>Findings</b>	None required (however, for zoning amendment decisions, governing board must adopt statement addressing plan consistency, reasonableness and public interests furthered)	Written findings of fact required
<b>Voting</b>	Simple majority, but if protest petition filed on rezoning (not applicable to counties), 3/4 required	4/5 to decide in favor of applicant, but if special/conditional use permit is issued by governing board or planning board, only a simple majority required
<b>Standard for decision</b>	Creates standard	Can only apply standards previously set in ordinance

## Some Key Differences between Legislative and Quasi-Judicial Zoning Decisions - Continued

	<b>Legislative</b>	<b>Quasi-Judicial</b>
<b>Conditions</b>	Not allowed (unless part of a conditional zoning approval if based on adopted ordinances, plans, expected impacts, etc., and if mutually acceptable to applicant and government)	Allowed if based on standard in ordinance
<b>Time to initiate judicial review</b>	Two months to file challenge	30 days to file challenge
<b>Conflict of interest</b>	Requires direct financial interest to disqualify	A fixed opinion that is unlikely to change, undisclosed ex parte communications, a close familial, business or other associational relationship with an affected person or any financial interest disqualifies
<b>Creation of vested right</b>	No (but may for conditional zoning approvals, if substantial expenditures are made in reliance on them)	Yes, if substantial expenditures are made in reliance on it

## Statutory Authority for Creating a Planning Board

*Note: The excerpts from the North Carolina General Statutes provided below are from the North Carolina General Assembly Web site [<http://www.ncleg.net/gascripts/statutes/Statutes.asp>] and are as updated through the 2007 session.*

### Cities

#### **North Carolina General Statutes Chapter 160A: Cities and Towns**

#### **Article 19: Planning and Regulation of Development**

#### **§ 160A-361. Planning boards.**

- (a) Any city may by ordinance create or designate one or more boards or commissions to perform the following duties:
  - (1) Make studies of the area within its jurisdiction and surrounding areas;
  - (2) Determine objectives to be sought in the development of the study area;
  - (3) Prepare and adopt plans for achieving these objectives;
  - (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
  - (5) Advise the council concerning the use and amendment of means for carrying out plans;
  - (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the council may direct;
  - (7) Perform any other related duties that the council may direct.
- (b) A board or commission created or designated pursuant to this section may include, but shall not be limited to, one or more of the following:
  - (1) A planning board or commission of any size (with not fewer than three members) or composition deemed appropriate, organized in any manner deemed appropriate;
  - (2) A joint planning board created by two or more local governments pursuant to Article 20, Part 1, of this Chapter. (1919, c. 23, s. 1; C.S., s. 2643; 1945, c. 1040, s. 2; 1955, cc. 489, 1252; 1959, c. 327, s. 2; c. 390; 1971, c. 698, s. 1; 1973, c. 426, s. 57; 1979, 2nd Sess., c. 1247, s. 35; 1997-309, s. 7; 1997-456, s. 27; 2004-199, s. 41(a).)

## Statutory Authority for Creating a Planning Board - Continued

### Counties

#### North Carolina General Statutes Chapter 153A: Counties Article 18: Planning and Regulation of Development

##### § 153A-321. Planning boards.

A county may by ordinance create or designate one or more boards or commissions to perform the following duties:

- (1) Make studies of the county and surrounding areas;
- (2) Determine objectives to be sought in the development of the study area;
- (3) Prepare and adopt plans for achieving these objectives;
- (4) Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
- (5) Advise the board of commissioners concerning the use and amendment of means for carrying out plans;
- (6) Exercise any functions in the administration and enforcement of various means for carrying out plans that the board of commissioners may direct;
- (7) Perform any other related duties that the board of commissioners may direct.

A board or commission created or designated pursuant to this section may include but shall not be limited to one or more of the following:

- (1) A planning board or commission of any size (with not fewer than three members) or composition considered appropriate, organized in any manner considered appropriate;
- (2) A joint planning board created by two or more local governments according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1945, c. 1040, s. 1; 1955, c. 1252; 1957, c. 947; 1959, c. 327, s. 1; c. 390; 1973, c. 822, s. 1; 1979, c. 611, s. 6; 1997-309, s. 5; 2004-199, s. 41(c).)

## **Open Meetings Law and Interpretations**

### **North Carolina General Statutes Section 143-318**

#### **Source:**

Lawrence, David M. *Open Meetings and Local Governments in North Carolina: Some Questions and Answers, Fourth Edition*. Chapel Hill: Institute of Government. 1994.

#### **Open Meetings**

##### **1. Who is subject to the law?**

It applies to any public body. "Public body" is a broad term that includes any authority, board, commission, committee, council or other body of state or local government that has at least two members and carries out one of five functions: legislative, policy-making, quasi-judicial, administrative or advisory. The law covers both elected and appointed boards and commissions.

##### **2. Are all meetings covered?**

No. Only official meetings. An official meeting of a majority of the body's members -- in person or electronically -- to conduct a hearing, deliberate, take action or otherwise transact the public's business. And a court has said "deliberate" means to examine, weigh and reflect upon the reasons for or against a possible decision. If a body is only receiving information, that counts.

##### **3. What about conference calls and emails?**

Conference calls are covered. A chat room meeting would count as an official meeting. A message sent from one member of a body to all of the others would not -- it's like posting a message on a bulletin board. A gray area lies between those two examples. If the others were to reply to a message and then copy each other, and then more responses followed, the "conversation" may constitute an official meeting.

##### **4. Workshop meetings, agenda meetings and work sessions?**

Yes. These meetings, in which the board can be informed about matters and discuss them but not take final actions, are less formal than regular meetings but are considered official meetings and are open to the public. Even if the board does nothing but receive information, the meeting is public.

##### **5. Can a board majority gather informally or socially without constituting an "official meeting"?**

Social gatherings are allowed, but boards are not permitted to use these events as an excuse to deliberate outside of the public eye. Meals that a board regularly takes together, for example, are considered official meetings.

##### **6. Can a board chairman meet individually, and privately, with each member to discuss a public matter?**

Yes. However, the law also says a board must not essentially take action through these individual meetings.

**7. Do they have to announce meetings?**

Yes. The requirements vary according to the type of meeting: regular, special, emergency and recessed. For example, special meetings are official meetings that are not emergency meetings, recessed meetings or regular meetings. The law required boards give at least 48 hours of notice for special meetings, stating the time, place and purpose of the meeting. Notice must be posted on a board's principle bulletin board, if it has one or the door of the board's usual meeting place. Notice must also be made to everyone who has submitted a written request for notice.

**Closed Meetings**

**8. When are they allowed?**

When a board plans to discuss particular issues that generally fall into the following categories, they may do so in a closed session: confidential information, consultations with an attorney, claims or litigation, business location or expansion, real property acquisition, employment contracts, certain personnel matters, investigations, school violence response plans and terrorist activity response plans. See G.S. 143-318.11.

**9. What procedure must be followed?**

The law requires the board to disclose the reason for going into the closed session, and then vote on it. In addition, if the body says it is going to discuss "confidential information" it must cite the law that makes the matter confidential. If the body wants to discuss pending litigation, the motion must identify the parties to the litigation. If officials go into a closed session to talk about one thing, they can't talk about other matters. To broaden the discussion, the board must return to open session, disclose the new topic, and vote to return to closed session.

**10. If a board doesn't follow proper procedure what can you do?**

You can stand up, ask for permission to speak, and object.

**11. You might say?**

"North Carolina's open meetings law, Chapter 143 of the General Statutes, requires that all meetings of state and local governmental bodies be open to the public unless there is a specific statutory exemption authorizing closure. If you contend that this meeting can be closed legally, please advise me of the statutory authority for your action."

**12. Must they keep minutes of a closed meeting?**

Yes. The law requires "minutes" be kept that are "full and accurate" and that they provide a "general account" to let a person who wasn't there "have a reasonable understanding of what transpired." A "general account" is intended to provide some sort of record of the discussion that took place behind closed doors, whether action was taken or not. The law is unclear on how detailed the minutes must be. The board must make those minutes available for public inspections as soon as the reason for the closed session is no longer valid.

**13. Is a board allowed to vote in a closed meeting?**

Yes, but the vote must be disclosed in the minutes.

**14. Can a board prohibit its members from disclosing what happened in a closed session?**

No. Permission to hold a closed session is simply permission to exclude the public; it is not authorization to prohibit those present from disclosing what occurred.

**15. What happens if the Open Meetings Law is violated?**

Three possibilities: 1) A court can issue a declaratory judgment, which is a finding that a violation has taken place. 2) If someone seeks an injunction against violations, a court may order the public body not to violate the law in the future. 3) A person can ask a court to invalidate an action taken (or deliberated) based upon a violation of the open meetings law.

**Citizen Rights in the Meeting**

**16. Can you take pictures or tape record the meeting?**

Taping, photographing, filming, or other types of recording open meetings are permitted by any member of the public. Radio and television station are allowed to broadcast open meetings.

**17. Can public bodies hide the subject of their deliberations?**

No. Public bodies must deliberate in such a way that a member of the public should be able to understand what they are talking about. They may not, for example, refer to secret letters or codes in their deliberations. They may, however, refer to items on an agenda made available to the public before the meeting as long as the agenda is sufficient to explain what the board is discussing.

**18. What kind of background material is a board required by law to release?**

Enough for the public to understand the subject of deliberations and actions. The public is entitled to background materials distributed to the board under the public records statute.

**19. Does a citizen have the right to address a public body?**

No. You have a right to attend and listen. You do not have a right to talk to the public body or participate in its deliberations.

## **Additional Resources**

(Updated November 2008)

### **Training**

The North Carolina Chapter of the American Planning Association has a “*Citizen Planner Training Program*” available online.

[http://www.nc-apa.org/index.php?option=com\\_content&task=view&id=47&Itemid=104](http://www.nc-apa.org/index.php?option=com_content&task=view&id=47&Itemid=104),

### **General Planning Information**

The website of the American Planning Association (APA), <http://www.planning.org>, allows for a search by topic or keyword. Information about APA membership is also available.

The *Planning Commissioners Journal* and its website, <http://pcj.typepad.com>, provide information designed for planning board members, elected officials, community leaders, etc.

### **NC General Statutes**

The NC General Assembly website, <http://www.ncleg.net>, provides look-up capabilities for bills, session laws, etc. Look on right-hand side under Shortcuts, or use the Browse, Look-up, or Search functions. It is also possible to do a search by word.

### **Modernizing City and County Planning Statutes (2005 Planning Legislation Changes)**

North Carolina’s planning statutes went through a major overhaul in 2005, with most changes taking effect on January 1, 2006. A checklist of changes can be found at:

<http://www.ncplan.unc.edu/legisinfo/OrdAmndtGuide-05%20StatAmdt.htm>

### **University of North Carolina School of Government (Institute of Government)**

School of Government (SOG) faculty and staff assist local governments by providing training, research and advice on a variety of topics. Its website, <http://www.sog.unc.edu/>, includes information on courses for public officials, publications, links to government and associated organization sites, etc.

### **Local Government Codes of Ordinances**

Municipal Code Corporation – <http://www.municode.com>. Click on “Online Library” (almost 100 NC local governments’ ordinances are available).

### **Demographics and Statistics**

US Census - <http://www.census.gov/>

NC State Data Center - <http://sdc.state.nc.us>

NC Economic Data Links - <http://www.lib.unc.edu/reference/govinfo/statistics/county.html>

## **Additional Resources - Continued**

### **Mapping and Geographic Information Systems (GIS)**

North Carolina Center for Geographic Information and Analysis - <http://www.cgia.state.nc.us/>

### **NC Economic Development**

NC Department of Commerce, Business ServiCenter -

<http://www.nccommerce.com/en/BusinessServices/StartYourBusiness/>

NC Department of Commerce, Economic Development Information Services -

<http://www.nccommerce.com/en/BusinessServices/LocateYourBusiness/EDISearch/>

NC Rural Economic Development Center - <http://www.ncruralcenter.org/databank/index.html>

### **North Carolina State and Local Government News and Information**

State and Local Government on the Net - <http://www.statelocalgov.net/state-nc.cfm>