

# Boards & Commissions Legal Training

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# Presentation Overview

- Role of the boards and commissions
- Role of the Town Attorney's Office
- Quasi-Judicial Proceedings
- Best practices for quasi-judicial hearings

# Role of Boards & Commissions

- Powers, duties, and general information can be found in the code and in each individual board's bylaws
  - Planning Commission (Chapter 2.16)
  - Board of Adjustment (Chapter 17.06)
  - Board of Building Appeals (Section 15.30.090)
  - Design Review Board (Section 17.42.100)
  - Historic Preservation Board (Section 15.64.030)

# Role of the Town Attorney's Office

- Provide legal advice to the Board or Commission
- Ensure compliance with hearing procedures
- Provide legal training and updates to the Board or Commission
- Provide legal advice to the Town staff, when requested

# Quasi-Judicial Proceedings: What is a quasi-judicial matter?

- A public approval process that:
  - Includes notice and an opportunity to be heard for interested individuals;
  - Involves the application of existing standards to facts developed at a public hearing; and
  - Affects specific individuals or property (as opposed to being a generally applicable public policy or law)

# Quasi-Judicial Proceedings: What is the quasi-judicial role?

- As a member of a board or commission you are tasked with making decisions that may affect the protected property rights of a specific person or entity – aka a quasi-judicial matter
- In these cases, you are essentially acting as a “judge” in order to afford the applicant **due process**
  - The right to use property that a person owns or has a right to possess is a fundamental constitutional right
  - Due Process Clause: No person shall be deprived “of life, liberty or property, without due process of law.”
- It is the duty of the board or commission to provide applicants with due process by:
  - Remaining fair and impartial
  - Considering only the evidence presented at the hearing

# Quasi-Judicial Proceedings: Legislative vs. Quasi-Judicial Acts

- What is a legislative act?
  - Reflects public policy relating to matters of a permanent or general character
  - Not usually restricted to a particular individual or entity
    - Affects the legal rights of specific individuals only in the abstract
  - Prospective in nature
  - You act as “legislators” when you review and make general rules
    - When you apply those general rules to specific people or entities and property, you are acting in your quasi-judicial role

# Quasi-Judicial Proceedings: Legislative vs. Quasi-Judicial Acts

- What is a quasi-judicial act?
  - Determines the rights of a specific person or entity in relation to a specific property interest (often an interest relating to land or a license)
  - Based on facts developed at a hearing to resolve the particular interest in question
  - You act as the quasi-judges and hear the evidence and then apply the existing legal standards to the specific case



# Quasi-Judicial Proceedings: Legislative vs. Quasi-Judicial Acts

Legislative Acts	Quasi-judicial Acts
Adoption of general health and safety ordinances	Action on a proposed rezoning application
Adoption of a master plan	Hearing on a proposed liquor license
Adoption of general amendments to the subdivision, zoning or licensing ordinances	Disciplinary hearing to suspend or revoke a liquor license, business license or other protected license
Adoption of an annexation ordinance	Subdivision or development hearing
	Hearing on a variance request or sign code appeal

# Quasi-Judicial Proceedings: The Hearing Process

- How to prepare yourself for a hearing
  - Get into the “judge” frame of mind early
    - Stay neutral
    - Be careful of making prejudicial comments
    - Avoid ex-parte communications
  - Review your packet!
    - Consider the key issues and any questions you might have for the hearing
    - Focus on the scope of the hearing – knowing what the hearing is not about is important
  - Confirm that you don’t have any conflicts of interest (financial, personal, etc.)
    - If you do, be prepared to recuse yourself at the start of the hearing – don’t hesitate to reach out to the Town Attorney’s Office for guidance

# Quasi-Judicial Proceedings: The Hearing Process

- What happens at the hearing?
  - Anyone is permitted to testify and present evidence
    - Town staff presents first
    - The applicant, or their representative, makes their presentation second
    - Members of the public are invited to speak
  - Board or commission members may ask questions of Town staff, the applicant, or any speaker
  - Deliberation by the board or commission
  - Action

# Quasi-Judicial Proceedings: Ex-Parte Communications

- What does ex-parte communications mean?
  - “Ex-parte” is a Latin phrase that means “on one side only; by or for one party”
  - Contacts/communications between an interested party and the decision maker that take place without public notice and outside the record
  - What are examples of ex-parte communications?
    - Can be oral or written communication
    - Rule of thumb: if you didn’t find out the information while you were “on the record” in a meeting then it might be an ex-parte communication

# Quasi-Judicial Proceedings: What are the Risks?

- State claims
  - Rule 106 claims
- Federal claims
- Insurability issues
- Practical risk

Questions?