

Legal Overview of Roles and Responsibilities of Charlotte-Mecklenburg Planning Commission

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What Governs the Planning Commission?

- Interlocal Cooperation Agreement
- Rules of Procedure
- Operating Agreement
- Council Policies
- Open Meetings Law

Interlocal Agreement

- Number of Members
- Terms of Office
- Officers
- Duties

ROLE OF THE PLANNING COMMISSION

The Interlocal Cooperation Agreement, which established the joint City of Charlotte and County of Mecklenburg Planning Commission, outlines the duties and responsibilities of the Planning Commission at Section 3.80.

Two Subcommittees

1. ***Planning Committee***

Sections 3.90.1 - 12 give the Planning Committee the responsibility for making recommendations to the Governing Bodies regarding the adoption of area and comprehensive land use plans

2. ***Zoning Committee***

Sections 3.95.1 - 7 give the Zoning Committee the responsibility for providing recommendations to the Governing Bodies regarding rezoning petitions and zoning text amendments.

Advisory Decisions

Very important role of planning boards is to consider public input and bring a professional and technical expertise to the making of land-use decisions so as to advise the governing body appropriately.

Zoning Amendments

With respect to proposed zoning amendments, N.C.G.S. § 160A-383 requires that the planning board (Zoning Committee) provide a written recommendation to the governing board (City Council) addressing whether the proposed amendment is **consistent with the comprehensive plan and/or any other officially adopted plan that is applicable.**

Myers Park v. City and Queens University Case

- On July 29, 2014, NC Court of Appeals ruled in favor of B.T. Atkinson and the Myers Park Homeowners Association and held that the Floor Area Ratio (FAR) Text Amendment passed by Council on June 21, 2010, is invalid.

What is the FAR Text Amendment

- The FAR Text Amendment exempts parking decks constructed as accessory uses to an institutional use from being included in FAR calculations when located in single-family and multi-family districts.
- The Text Amendment went through a lengthy stakeholders process and applied City-wide to all institutional uses including churches, schools, universities, day care centers, and health care institutions

Statement of Plan Consistency

- Plaintiffs failed to challenge the substance of the FAR Text Amendment within the requisite one year statute of limitations, so alleged a procedural defect in the adoption of the FAR Text Amendment.
- Claimed City failed to adopt a sufficient statement of consistency when approving the Text Amendment.
- Even though statements of consistency are not subject to judicial review, the Court found that the City failed to include an explanation of why the amendment was reasonable and in the public interest.

Modification of Adoption Procedure

- In the next month, we will be modifying the City's procedure for addressing plan consistency to comply with the Court ruling.
- The Zoning Committee will be asked to provide additional explanation for why a rezoning or text amendment should be approved or denied.

Rules of Procedure

- Elections
- Meetings/Quorums
- Voting Procedure
- Disclosure Statement
- Conflicts of Interest

Conflicts of Interest

- **What is a conflict of interest?** “...situation in which a citizen board member's duty to act in the public interest clashes with the member's inclination to advance his or her personal interest.” David W. Owens, Conflicts of Interest in Land Use Management Decisions (1990).

N.C. Gen. Stat. §160A-381(d)

“Members of appointed boards providing advice to the city council shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a ***direct, substantial, and readily identifiable financial impact on the member.***”

Code of Ethics for City Officials

“Any member who has an interest in any act or action coming before the board, agency, committee or commission of which he is a member shall publically disclose his or her interest and shall completely withdraw from any consideration of said act or action.”

Interest means **direct or indirect pecuniary or material benefit** accruing to a city official as a result of a **contract or transaction** which is or may be the subject of an official act or action by or with the city.

Article III - Conflict of Interest

“Section 1. No member of the Commission shall ***seek to influence a decision, participate in any action or cast a vote*** involving any matter that is before the Commission which may result in a ***private benefit to themselves, their relatives or their business interest.***”

→ Commissioners with possible conflicts must declare the conflict, ask for determination by Commission, refrain from any deliberation on the matter, and shall leave any chamber in which such deliberations take place

Quasi-judicial Opinions

N.C. Gen. Stat. §160A-388(e1) “A member of the board or any other body exercising the functions of a board of adjustment shall not participate in or vote on any quasi-judicial matter in any 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, undisclosed ex parte communications, 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.”

Consequences?

- Court could invalidate action taken by a board in which a member with a conflict of interest participated, and/or send it back to the board for reconsideration.
- The individual member who participates in a decision despite his or her conflict may be sanctioned for violating the ordinance and removed from office.

City Attendance and Reappointment Policy

- City Council has an ***attendance policy*** that requires you to attend 65 percent of all regular, special and assigned subcommittee meetings from the time your term begins until the end of this calendar year and each subsequent calendar year thereafter; and you may not miss three consecutive regular meetings of this board. If you fail to meet either of these two requirements you will automatically be removed from the board per City Council's policy. You must attend 50% of each meeting in order to be counted present.
- In addition, City Council also has a ***reappointment policy*** that states if you wish to be considered for another term, you must have attended at least 75 percent of all regular, special and assigned subcommittee meetings over the course of your term in order to be eligible for reappointment.
- The Board of County Commission follows the same attendance policy for Planning Commission appointees.

Open Meetings Law and Interpretations

NCGS § 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.

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.

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.

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.

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.

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.

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.

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 requires 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.

Public Records

§ 132-1. "Public records" defined.

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, "minimal cost" shall mean the actual cost of reproducing the public record or public information. (1935, c. 265, s. 1; 1975, c. 787, s. 1; 1995, c. 388, s. 1.)