

Legal Issues for COAs

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The Attire Review



Due Process

- Clear guiding standards
- Adequate Notice
- Opportunity to be heard
- Impartial decision-makers
- Decision based on the standard
- Decision supported by the evidence
- Right to appeal



Open Meetings

- Official meetings of public bodies must be
 - conducted in public
 - with notice as required by law
- “Official meeting”:
 - simultaneous gathering (even electronic)
 - of majority of board
 - To conduct hearing, deliberation or public business
 - (Social occasions excepted)
- Certain closed sessions allowed (consult with attorney); notice still required



Public Records

- Records made or received in the transaction of public business
- Electronic and hard copy
- Determined by content, not location (personal email)
- Subject to disclosure
- Limited specific exceptions (closed session minutes, personnel, economic dev., others)



Before the Hearing

At the Hearing

The Decision

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Clear Guiding Standards

- Congruity standard
 - A contextual standard
 - Based on the overall physical environment
 - Identified in ordinance and guidelines
 - May not 'cherry pick' certain properties to determine the congruity

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Notice

- Mailed Notice
- Posted Notice (Sign)
- Any Additional Ordinance Requirements

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Preparation

- Application
- Staff Report
- Site Visit



Ex Parte Communication

- Contacts with a party outside of the hearing
- Should be avoided
- Must be disclosed



Bias

Board member cannot have a fixed opinion that is not susceptible to change



Conflicts of Interest

- a close familial, business, or other associational relationship with an affected person
- a financial interest in the outcome of the matter





AT THE HEARING





Creating the Record

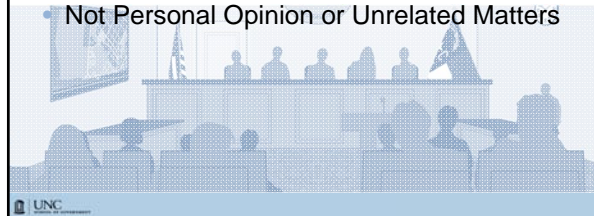
“Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record.”

- Burden of Production
- Documents
- Testimony



Testimony

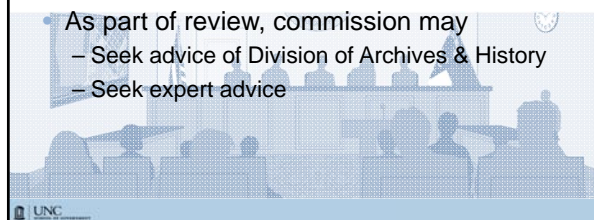
- Sworn Witnesses
- Factual Testimony
- Related to the Standards
- Not Personal Opinion or Unrelated Matters



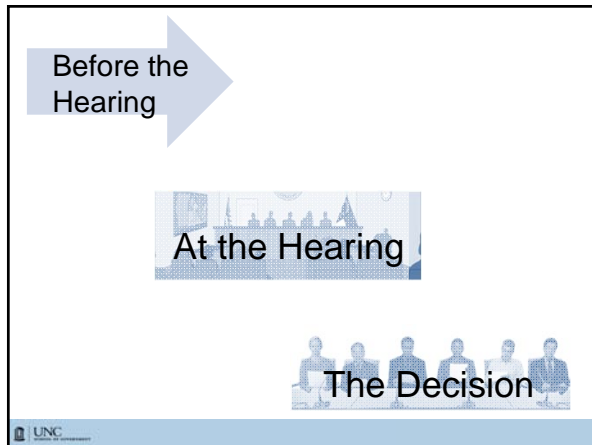
Opinion Evidence

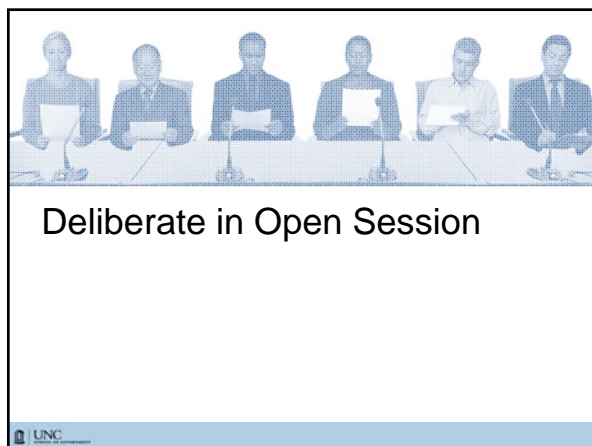
Expert Witnesses


- Projected Traffic Impacts
- Other technical matters
- As part of review, commission may
 - Seek advice of Division of Archives & History
 - Seek expert advice












Apply Standards

- Meaning derived “from the total physical environment of the Historic District.”
A-S-P Associates v. City of Raleigh, 298 N.C. 207 at 222, 258 S.E.2d 444 at 454 (1979).
- May not ‘cherry pick’ certain properties to determine the congruity
Sanchez v. Town of Beaufort, 710 S.E.2d 350, 355 (N.C. Ct. App. 2011)


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Motion

- Approve, approve with conditions, or deny
- Reasoning related to the standards

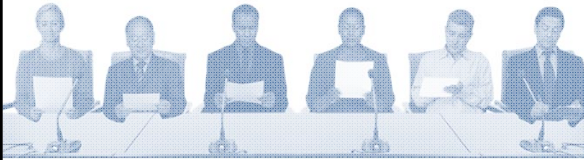
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Written Decision


- May prepare draft decision prior to hearing
- Final decision document prepared after the meeting (may be by staff or attorney)
- Accurately reflect action and reasoning of the board
- Signed by chair or authorized member
- Need more than meeting minutes


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Notice of Decision


- Email, first class mail, or personal delivery
- Staff certifies delivery for the record (i.e., clerk affidavit)





Appeals

- 30 days from effective date (or as specified in rules of procedure)
- To the board of adjustment
- On the record





Questions

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Authority (GS160A-400.8)

Identify

- Inventory historic and significant properties
- Recommend designations (and revocations)

Protect

- Review and act on certificates of appropriateness
- Acquire and sell property to promote preservation

Advocate

- Restore and operate historic properties
- Conduct educational programs
- Recommend preservation elements of comprehensive plan



Opening

- (Swearing In Witnesses)
- Description of the Hearing
- Description of the Standards
- Opportunity for Recusal
- Opportunity to Disclose Ex Parte Communication



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Board Action

Don't

- Doze
- Whisper to Others
- Condescend
- Veer off topic
- Be a pushover
- Redesign a project

Do

- Pay Attention
- Ask Questions
- Treat all with respect
- Focus on the project and standards
- Review with a Critical Eye
- Apply appropriate conditions

Board Action

Don't

- Decide based on personal opinion

Do

- Decide if the proposed project meets the stated standards