

This document is the script used in quasi-judicial proceedings. It shows the process, but also contains explanations as to the "why" for the steps in the process.

## General Introduction to Quasi-Judicial Decisions

This is a quasi-judicial hearing on the application submitted for the McConnell Property Subdivision.

This hearing is a quasi-judicial evidentiary hearing. That means it is like a court hearing. State law sets specific procedures and rules concerning how this board must make its decision. These rules are different from other types of land use decisions like rezoning cases.

The board's discretion is limited. The board must base its decision upon competent, relevant, and substantial evidence in the record.

Competent evidence is evidence that is sufficiently trustworthy and reliable, and that is legally fit and acceptable for consideration by the Board. Examples of evidence that would likely not be competent includes: speculation, vague evidence, non-expert opinions as to something that requires an expert, evidence that is not relevant as to whether a standard has or has not been met, hearsay evidence, unless it is presented under an exception that make it competent, such as reports written by experts.

Material evidence is evidence that shows that the standards will or will not be met.

Substantial evidence is more than a scintilla. Evidence is substantial if it is relevant and something that a reasonable mind would regard as sufficient to support a specific conclusion. Examples of evidence that is not substantial includes mere speculation, unsubstantiated fears of the community, or vague assertions.

A quasi-judicial decision is not a popularity contest. It is a decision constrained by the standards in the ordinance and based on the facts presented. If you will be speaking as a witness, please focus on the facts and standards, not personal preference or opinion.

\* Participation is limited. This meeting is open to the public. Everyone is welcome to watch. Parties with standing have rights to participate fully.

Parties may present evidence, call witnesses, and make legal arguments. Parties are limited to the applicant, the local government, and individuals who can show they will suffer special damages. Other individuals may speak as a witness, however, they will not be allowed to participate fully as a party, such as by questioning other witnesses, or by calling other persons to testify.

General witness testimony is limited to facts, not opinions. For certain topics, this board needs to hear opinion testimony from expert witnesses. These topics include projections about impacts on property values and projections about impacts of increased traffic. Individuals providing expert opinion must be qualified as experts and provide the factual evidence upon which they base their expert opinion. In

evaluating expert testimony, mere conclusory testimony without providing the foundation of the expert's opinion will not sufficient to establish the existence or nonexistence of a fact or conclusion.

Generally speaking, evidence that is presented, that is not objected to, may be considered by the Board. However, even if certain evidence is not objected to, it MAY NOT be considered by the Board unless presented by an expert witness:

1. The use of property in a particular way would affect the value of other property.
2. The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety.
3. Matters about which only expert testimony would generally be admissible under the rules of evidence.

I want to remind the Board that even though the Board may rely on other evidence if it is not objected to, the Board should rely on competent, reliable evidence in making its decision. Even if incompetent evidence is admitted in the hearing, what is important is the evidence that is actually relied upon by the Board.

Witnesses must swear or affirm their testimony. Tonight all witnesses will be sworn or affirmed, however they will be sworn or affirmed as they come up to testify, rather than in a group.

### **Identification of Parties**

The Board will recognize the applicant as a party. Are there other persons who believe they have standing to participate fully as a party? [Have them come forward and state the reasons why they believe they should have standing. Usually, and adjacent property owner will have standing. Otherwise, they must provide a reason that the proposed subdivision will affect them differently from the rest of the community.]

### **Identification of Witnesses**

Will each party tell me the witnesses they intend to call?

Are there other persons who don't qualify to be a party but who would like to testify?

### **Disclosure**

The parties to this case are entitled to an impartial board. A board member may not participate in this hearing if she or he has a fixed opinion about the matter, a financial interest in the outcome of the matter, or a close relationship with an affected person. Does any board member have any partiality to disclose or conflict of interest to offer at tonight's meeting?

PAUSE

IF THERE IS A RECUSAL

It is the policy of this board that a recused member shall step down from the dais and be excused from the room. The board member may return for the next matter.

PROCEED TO EX PARTE COMMUNICATION

"The parties to this case have rights for any ex parte communication to be disclosed. Ex parte communication is any communication about the case outside of the hearing. That may include site visits as well as conversations with parties, staff, or the general public. Does any board member have any ex parte communications or site visits to disclose?"

PAUSE

Based on the disclosures we've heard from the board concerning partiality and ex parte communications, does any member of the board or any party to this matter have an objection to a board member's participation in this hearing?"

PAUSE

IF NOT, PROCEED WITH HEARING

IF A PARTY RAISES AN OBJECTION

" \_\_\_\_\_ [insert party] has objected to \_\_\_\_\_'s [insert board member's name] participation in the hearing based on \_\_\_\_\_ [insert basis of objection]. When there is an objection to a board member participating in a quasi-judicial decision, the dispute is resolved by a majority vote of the remaining members of the board. I'll now ask the remaining members of the board for a motion as to whether \_\_\_\_\_ [insert board member's name] may participate in this hearing."

**Staff Update:**

I'd like to call on planning staff for the presentation of their staff report.

Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

**Applicant Presentation of Evidence**

Applicant, do you want to speak or testify? [OR] Do you want to call your first witness?

[SWEAR EACH WITNESS]

Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

"Before you begin, please state for the record your name, address, and relation to the case.

*TESTIMONY*

"Does the board have questions for the witness?"

*PAUSE*

"Does any party have additional questions for the witness?"

*PAUSE*

"\_\_\_\_\_ [insert applicant name], do you wish to call any other witnesses to speak on behalf of your case?"

*APPLICANT MAY CALL ADDITIONAL WITNESSES*

[SWEAR THE WITNESS]

Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

"Before you begin, please state for the record your name, address, and relation to the case.

*TESTIMONY*

"Does the board have questions for the witness?"

*PAUSE*

"Does any party have additional questions for this witness?"

*PAUSE*

**Other Parties with Standing Testimony**

**SWEAR WITNESS**

Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

"Before you begin, please state for the record your name, address, and relation to the case.

**PAUSE**

**TESTIMONY**

"Does the board have questions for the witness?"

**PAUSE**

"Does any party have additional questions for the witness?"

**PAUSE**

**PARTY MAY CALL ADDITIONAL WITNESSES**

**SWEAR WITNESS**

Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

"Before you begin, please state for the record your name, address, and relation to the case.

**PAUSE**

**TESTIMONY**

"Does the board have questions for the witness?"

**PAUSE**

"Does any party have additional questions for this witness?"

**PAUSE**

**OTHER WITNESSES** - CALL THEM AND GO THROUGH SAME PROCEDURE.

**RESPONSE**

“Parties with standing have an opportunity to offer rebuttal or closing argument. As a reminder, please focus your response on legal arguments and new or clarifying evidence. Please avoid mere repetition of the evidence we already heard. We will begin with the applicant. Then, I will call any other parties with standing.”

*CALL APPLICANT*

If not already sworn: Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

*CALL OTHER PARTIES*

If not already sworn: Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?

**Closing Arguments**

At this time, I will allow each party \_\_\_\_\_ minutes to make a closing argument. [Applicant can choose to go first or last.

**Motion to Continue the Hearing**

“In limited circumstances this board may decide to continue a hearing to a later meeting. This may be at the request of a party or on the board’s own motion. Does any party or a council member believe that a situation existed that warrants the continuance of this hearing? And is there a motion to continue?”

*PAUSE*

*MOTION, SECOND, DISCUSSION, AND VOTE*

*WITH VOTE TO CONTINUE THE HEARING*

“This hearing is continued to \_\_\_\_\_[state time and place for the continued hearing].”

*NOTE: If the above happens and the issue is continued, then move to the next agenda item. If not, proceed with the following steps.*

### **Deliberation**

"Does the board have any more questions for the parties or witnesses before we move into deliberation?"

"Does any board member have personal knowledge of additional facts relevant to this case that should be entered into the record?"

*PAUSE*

"Hearing no additional questions or presentation of relevant facts, the board will now begin deliberation. The evidentiary hearing remains open so that the board may ask clarifying questions, if needed.

"As a reminder, this board is tasked with deciding if, based on the evidence presented at the hearing before this Board, this proposal meets the applicable standards. This decision cannot be based on the personal preference of board members. Rather a decision must be based on competent, material and substantial evidence in the record.

If the applicant meets their burden of producing competent, material and substantial evidence that the standards in the ordinance will be met, the burden shifts to the other parties opposing the application to show by competent material and substantial evidence that the standards in the ordinance will not be met. If both side present conflicting evidence as to a standard, the Board will have to weigh the evidence and determine which side's evidence is correct. As an example the Board may determine that one side's evidence is more credible, and more reliable.

If the applicant does not meet their burden of producing competent, material and substantial evidence that the standards in the ordinance will be met, the Board must deny the application.

The application as originally submitted was considered by the Planning Board and the Planning Board made a recommendation. Because this occurred outside of the hearing before this Board, nothing that occurred at the Planning Board level, including the Planning Board's recommendation, is considered evidence that you can base your decision on. However, the Planning Board's recommendation may be useful to the Board in identifying issues that this Board may want to consider and evaluate based upon the evidence that was presented at the hearing before this Board.

Board members are encouraged to reference the applicable standards and specific evidence in their deliberation so that staff and I will have enough information to prepare the written decision for the Board.

**Motion and Vote**

“Is there a motion regarding this request?”

*MOTION, SECOND, DISCUSSION AND VOTE*

**Decision and Closing**

“Staff will draft and I (or an authorized designee) will sign a final written decision to reflect the vote and reasoning for this decision. That written decision will be provided to the applicant and other parties with a right to such notice.

“Thank you to everyone attending the hearing regarding \_\_\_\_\_ [insert case name]. We welcome you to stay for the other items on the agenda. If you are leaving, please do so quietly at this time.”