

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 3 January 2006

SUBJECT: Rules Change for Quasi-Judicial Hearings

ATTACHMENT(S):

1. Draft amended rules
2. Letter from Bar Authorized Practice Committee
3. Letter to NC Bar

SUMMARY OF REQUEST:

The North Carolina State Bar's Authorized Practice Committee has issued an opinion letter finding that it to be the unauthorized practice of law to represent another person or a company in a quasi-judicial hearing. As a result, the common practice of developers being represented by engineers or surveyors, and of the County being represented by planning staff, is illegal. Attached you will find draft amended rules which would temporarily solve this problem. These rules are proposed to be temporary in nature, pending the response to the inquiry that your County Attorney has made of the State Bar, a copy of which is attached.

The only changes to this Board's Rules for Quasi-Judicial Proceedings are as follows:

1) A new section 38.1 is added, as follows:

Rule 38.1 Representation. Any party who is an individual may represent themselves in a quasi-judicial hearing. Parties who are not individuals (including all may only appear through an attorney licensed to practice law in North Carolina. Witnesses may be questioned only by the individual party or by an attorney licensed to practice law in North Carolina representing a party in the hearing.

2) A new sentence is added to the preamble to the rules (just prior to Rule 34), as follows:

Notwithstanding any contrary provision of any rules or by-laws of other Board or body of Henderson County government, these rules shall be followed by all Boards or other governmental bodies of Henderson County when hearing matters required to be quasi-judicial proceedings.

COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:

The County manager supports this proposal. County staff will be present and prepared if requested to give further information on this matter.

If the Board is so inclined, the following Motion is suggested:

I move that the Board approve the amended rules as shown in the Board's agenda materials, to be in effect from this date until a response is received from the North Carolina State Bar to the inquiry from the County Attorney, or until the opinion from the North Carolina State Bar Authorized Practice Committee shown in the Board's agenda materials is withdrawn or modified.

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VI. QUASI-JUDICIAL PROCEEDINGS

The following rules of procedure are the Henderson County Board of Commissioners Rules of Procedures for Quasi-Judicial Proceedings. These rules shall be followed for all Quasi-Judicial Proceedings whenever the Henderson County Board of Commissioners or the CCWSD Board is sitting in a quasi-judicial capacity. Notwithstanding any contrary provision of any rules or by-laws of other Board or body of Henderson County government, these rules shall be followed by all Boards or other governmental bodies of Henderson County when hearing matters required to be quasi-judicial proceedings.

A. GENERAL PROVISIONS

Rule 34. Name. These procedures shall be called the Henderson County Board of Commissioners Procedures for Quasi-Judicial Proceedings (Hereinafter "Proceedings").

Rule 35. Governing Authority. The Henderson County Board of Commissioners (hereinafter "Board") shall be bound by the provisions of the applicable Ordinances. All members of the Board shall thoroughly familiarize themselves with the provisions of such Ordinance(s) before the Proceedings.

Rule 36. Powers. The Board shall have the power to hear and decide all Quasi-Judicial Proceedings arising under the terms of an Ordinance.

Rule 37. Definitions. The words listed below shall have the following meaning when used throughout these Procedures:

- (a) **Adverse Decision.** An adverse decision shall mean a determination that an Ordinance has been violated, a revocation of any permit issued pursuant to an Ordinance, a denial of any permit under an Ordinance or any other action taken by a county official which is adverse to a Person.
- (b) **Appeal.** An appeal shall mean a particular case being heard by the Board as a result of a person's filing a Notice of Appeal indicating their intent to contest an adverse decision where such Appeal is authorized by the applicable Ordinance.
- (c) **Board.** Board shall mean the Henderson County Board of Commissioners, including when the Board is sitting as the CCWSD Board.
- (d) **Burden of Proof.** Burden of Proof shall mean the responsibility for producing enough evidence to overcome a presumption of correctness.

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- (e) **Competent Evidence.** Competent evidence shall mean evidence, which in the discretion of the Chairman, is credible and relevant to prove or disprove a fact at issue.
- (f) **Critical Findings of Fact.** Critical Findings of Fact shall mean facts determined as true by the Board, which are pertinent to the decision rendered.
- (g) **Evidence.** Evidence shall mean anything offered before the Board, which tends to prove or disprove a fact.
- (h) **Hearing.** Hearing shall mean a public hearing.
- (i) **Notice of Appeal.** Notice of Appeal shall mean the written notice submitted by a Petitioner of his/her intent to contest an adverse decision.
- (j) **Opponent.** Opponent shall mean anyone adverse to the Petitioner, including, but not limited to, Henderson County, and its officers and employees.
- (k) **Ordinance.** Ordinance shall mean any Ordinance duly adopted by the Henderson County Board of Commissioners.
- (l) **Other Interested Parties.** Other Interested Parties shall mean persons other than the Petitioner(s) or the Opponents who has a substantial interest in the outcome of the Proceeding and who may be adversely affected by the decision to be rendered by the Board for a particular Proceeding. Such Other Interested Parties shall, at the discretion of the Board, have standing to become a party to the Proceeding, which is before the Board.
- (m) **Person.** Person shall mean an individual, or an entity capable of possessing legal title to real property in North Carolina.
- (n) **Petitioner.** Petitioner shall mean the person requesting that the Board make a determination of whether a particular Ordinance grants to that person a particular right in light of the facts and circumstances existing. Such determination may include, but not be limited to, the approval/disapproval of a preliminary plat under the Land Development Ordinance, the granting/denial of a Special Use Permit under the Zoning Ordinance, or the affirming/reversal of an adverse decision. Petitioner shall also mean the person petitioning the Board to make any other decision required to be made in a Quasi-Judicial Proceeding.
- (o) **Presumption of Correctness.** Presumption of Correctness shall mean an assumption that the adverse decision, which is contested by the Petitioner, was correct, and not in violation of Petitioner's rights.
- (p) **Proceeding.** Proceeding shall mean a quasi-judicial proceeding.

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- (q) **Procedure.** Procedure shall mean the manner in which a Proceeding is conducted.
- (r) **Public Hearing.** Public Hearing shall mean a hearing held by the Board at which the general public is allowed to speak on a particular issue and which has been advertised in accordance with the North Carolina Open Meetings Law and any terms in the applicable Ordinance. Public Hearings shall be held where required by applicable federal, state or local laws, and shall be conducted in accordance with the rules as outlined in this document if, as a result of the hearing, the Board will be making a determination of an individual's rights under a particular Ordinance.
- (s) **Quasi-Judicial Proceeding.** A Quasi-Judicial Proceeding is a Proceeding held by the Board in which the Board has discretion to apply Board policies or Ordinances to a person's situation and determine that person's rights. Such Proceedings shall include, but not be limited to, reviewing a preliminary plan under the Land Development Ordinance, considering a Special Use Permit under the Zoning Ordinance, or hearing adverse decision appeal. A Quasi-Judicial Proceeding may be held in open session or closed session as allowed by the North Carolina Open Meetings Law.
- (t) **Quorum.** Quorum shall mean the number of Board members, which must be present in order to conduct a Proceeding.
- (u) **Request for Quasi-Judicial Proceeding.** Request for Quasi-Judicial Proceeding shall mean a written request filed by a Petitioner with the Clerk to the Board in the nature of a Complaint filed in a Judicial Action before a North Carolina Court.
- (v) **Response to a Request for Quasi-Judicial Proceeding.** Response to Request for Quasi-Judicial Proceeding shall mean a written response filed by an Opponent or Other Interested Party with the Clerk to the Board in the nature of an Answer filed in a Judicial Action before a North Carolina Court.
- (w) **Rules of Evidence.** Rules of Evidence are formal rules dictating whether particular evidence may be admitted or not. Rules of Evidence as used in these Bylaws shall mean the North Carolina Rules of Evidence or the Federal Rules of Evidence.
- (x) **Rules of Procedure.** Rules of Procedure shall mean the Henderson County Board of Commissioners' Rules of Procedure for Quasi-Judicial Proceedings.
- (y) **Sworn Testimony.** Sworn Testimony shall mean testimony given by a witness who has sworn or affirmed that the testimony, which they are about to give, is true to the best of their knowledge.

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- (z) **Witness.** A witness shall mean any Petitioner, Opponent, Other Interested Party, or anyone appearing on the behalf of any of the aforementioned who testifies in a Proceeding before the Board.

Rule 38. No Rights Granted. The Rules of Procedure shall not grant to any person the right to petition the Board for any type of relief under a particular Ordinance where the Ordinance does not grant such a right to the person.

Rule 38.1 Representation. Any party who is an individual may represent themselves in a quasi-judicial hearing. Parties who are not individuals (including all may only appear through an attorney licensed to practice law in North Carolina. Witnesses may be questioned only by the individual party or by an attorney licensed to practice law in North Carolina representing a party in the hearing.

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B. PURPOSE AND OBJECTIVES

Rule 39. Purpose. The purpose of these procedures is to provide an orderly method by which the Board can hear and decide all Quasi-Judicial Proceedings arising under an Ordinance.

Rule 40. Objectives. The objectives of the Board when conducting a Proceeding are:

- (a) To conduct all Proceedings in a fair and efficient manner.
- (b) To base all decisions on competent and relevant evidence.
- (c) To ensure that the applicable Ordinance is being enforced and administered in a fair and efficient manner.
- (d) When hearing an adverse action appeal, to provide the citizens of Henderson County an administrative avenue to contest and appeal decisions made pursuant to an Ordinance, which adversely affect them (where allowed by the Ordinance).

C. DUTIES AND RESPONSIBILITIES

Rule 41. Chairman. The Chairman of the Board shall have the following duties and responsibilities:

- (a) **Conduct Proceedings.** The Chairman shall conduct the Proceedings in an orderly and efficient manner, consistent with the terms of the applicable Ordinance and these Bylaws.

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- (b) **Rule On Matters of Procedure and Evidence.** The Chairman shall be responsible for ruling on questions of Procedure or admissibility of evidence in accordance with the terms of these Rules of Procedure. Unless otherwise specified by Ordinance, the Chairman may, in his discretion, set time frames within which any documents associated with a Proceeding must be filed with the Clerk to the Board of Commissioners. Unless prohibited by Ordinance, the Chairman may, for good cause shown, issue an extension of time for any such filing.
- (c) **Written Decision.** The Chairman shall, in conjunction with the Clerk to the Board, be responsible for formulating the written decision of the Board.

Rule 42. Vice Chairman. The Vice Chairman of the Board shall be responsible for conducting all duties and responsibilities of the Chairman relating to the Proceeding in the Chairman's absence.

Rule 43. Clerk to the Board. The Clerk to the Board shall have the following duties and responsibilities:

- (a) **Minutes.** The Clerk to the Board shall be responsible taking clear, accurate, and detailed minutes at all Proceedings of the Board. Said minutes shall be detailed, and shall contain a summary of all evidence or testimony presented before the Board, and a summary of statements made by members of the Board.
- (b) **Maintain Records.** The Clerk to the Board shall be responsible for maintaining all records associated with the Proceedings. Said records shall include, but not be limited to, the Notice of Appeal or Request for Quasi-Judicial Proceeding submitted by the Petitioner in accordance with an Ordinance (where applicable), the Response to a Request for Quasi-Judicial Proceeding filed by an Opponent or Other Interested Party (as allowed by the Board), the application for any permit (where applicable), the Minutes, and all documentary evidence introduced before the Board.
- (c) **Notification and Correspondence.** The Clerk shall be responsible for all correspondence and notification required by the terms of these procedures. Such notification shall include a notice to the Petitioner by certified mail of the date, time and place of the Proceeding.
- (d) **Written Decisions.** The Clerk shall, in conjunction with the Chairman, be responsible for compiling the written decisions of the Board. The Clerk shall be responsible for sending a copy of the written decision to the Petitioner, the Opponents, and any Other Interested Parties appearing in a particular Proceeding.

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D. CONDUCTING A PROCEEDING

Rule 44. Party: Attendance. The Petitioner(s), Opponents, and Other Interested Parties (or their attorney) shall be required to appear in person at the Proceeding.

Rule 45. Procedure. The following Procedure shall be followed for each Proceeding:

- (a) Where the Proceeding is a public hearing, the Board shall go into public hearing in accordance with the procedures outlined in the Henderson County Board of Commissioners Rules of Procedures. When the Proceeding will be conducted in closed session, the Board shall go into closed session in accordance with the procedures outlined in the Henderson County Board of Commissioners Rules of Procedure and the North Carolina Open Meetings Law.
- (b) The Chairman, or such person as he shall direct, shall give a preliminary statement of the Proceeding. The preliminary statement shall contain the name of the Petitioner and the determination requested by the Petitioner.
- (c) Any Opponents or Interested Parties wishing to appear before the Board and present evidence with respect to the Proceeding shall be identified before any evidence is introduced.
- (d) All witnesses appearing in a case shall be sworn in by the Clerk to the Board.
- (e) The Petitioner(s) shall present his/her side of the Proceeding. The Petitioner shall be entitled to introduce evidence and present witnesses in presenting his/her side of the Proceeding. All witnesses presented or evidence introduced shall be subject to cross-examination by the other parties in the case.
- (f) Petitioner(s) and his/her witnesses may be questioned by the members of the Board.
- (g) At the close of Petitioner(s) evidence, Opponents and Other Interested Parties may present evidence to the Board. All evidence introduced or testimony presented shall be subject to cross-examination by the Petitioner(s).
- (h) Opponents, Other Interested Parties, and their witnesses may be questioned by the members of the Board.
- (i) At the close of all evidence introduced by the Opponents, or Other Interested Parties, the Petitioner(s) shall be given an opportunity to introduce rebuttal evidence in accordance with the procedures listed above.

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- (j) The Board in its discretion may allow persons not a Party to the Proceeding to testify before the Board, and present documentary evidence. Such persons may be cross-examined by the Parties in the case, and may be questioned by the Board.
- (k) After all evidence has been introduced, the Petitioner(s), Opponents, and Other Interested Parties shall be allowed to make conclusory arguments before the Board.
- (l) The Board may, at its discretion, request additional facts and information from the Petitioner(s), Opponent, or Other Interested Parties before arriving at a determination of the case. If such additional information is requested, the Proceeding may be continued to another meeting of the Board.
- (m) The Board shall discuss the evidence presented and determine the findings of fact by a majority vote. If the Proceeding is a public hearing, the Board shall close the public hearing before making any findings of fact. If a Proceeding is continued to another meeting of the Board in accordance with paragraph k above, all business, including the discussion required by this paragraph 1, shall also be continued.
- (n) After all Findings of Fact have been determined by the Board, the Board shall by majority vote draw conclusions based on the Findings of Fact as determined by the Board.
- (o) After all conclusions have been drawn by the Board, the Board shall by majority render a decision.
- (p) Notwithstanding the above, the Board may discuss the evidence generally at the close of a Proceeding, indicate a proposed decision by consensus, and direct any party to the proceeding, any staff member, or the County Attorney, to bring back proposed Findings of Fact and Conclusions for consideration by the Board at a meeting so designated by the Board.

Rule 46. Rules of Evidence. Neither the Board, nor the Petitioner, nor the Opponents, nor Other Interested Parties, shall be bound by the Rules of Evidence. The Chairman of the Board shall have the sole discretion in determining whether evidence may be introduced according to the purposes and objectives of the Board as stated in Article II, above.

Rule 47. Decisions.

- (a) **Written Decision Required.** The Board shall issue a written decision for all Proceedings within forty-five (45) days. The decision shall contain the following sections:
 - 1. "Findings of Fact" which shall list the facts of the Proceeding as determined by the Board;

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2. "Conclusions" which shall list the conclusions reached by the Board in light of the facts listed in the Findings of Fact; and
 3. "Decision" which shall state the decision of the Board.
- (b) Findings of Fact. Critical findings of fact made by the Board shall be based on sworn testimony or other competent evidence.
- (c) Presumption of Correctness. If the Proceeding is an Appeal, the adverse decision from which the Petitioner is appealing shall be presumed to be correct. The burden of proving that the decision was incorrect shall be upon the Petitioner.
- (d) Notification of Decision. The Board shall send to the Petitioner, the Opponents, and Other Interested Parties appearing before the Board, a copy of the written decision.

E. QUESTIONS NOT COVERED BY THESE PROCEDURES

Rule 48. Questions of Procedure. Questions of Procedure, which arise in association with a Proceeding and are not covered by these procedures, shall be determined in accordance with the Henderson County Board of Commissioners Rules of Procedures and any applicable law.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

Grady Hawkins, Chairman

ATTEST (County Seal)

Elizabeth W. Corn, Clerk

Adopted November 2, 1992
Amended September 15, 1993
Amended April 7, 1997
Amended September 17, 1997
Amended September 20, 2000
Amended June 19, 2002
Amended August 4, 2003

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Name. The Rules of Procedure for the Henderson County Board of Commissioners and the Cane Creek Water and Sewer District Board of Commissioners.

APPLICABILITY

Rule 1. Applicability of Rules

These rules apply to all meetings of the Board of Commissioners of Henderson County, the "Board", and to all meetings during which the Board of Commissioners of Henderson County sit as the Cane Creek Water and Sewer District Board of Commissioners, the "CCWSD Board". These rules shall apply at meetings at which the Board and the CCWSD Board is empowered to exercise any of the executive, quasi-judicial, administrative, or legislative powers conferred on it by law. Unless otherwise stated herein, use of the word "Board" shall be deemed to include the Henderson County Board of Commissioners and the CCWSD Board.

OPEN MEETINGS

Rule 2. Meetings to be Open.

The public policy of North Carolina and of Henderson County is that the hearings, deliberations, and actions of this Board and its committees be conducted openly.

Except as otherwise provided in these rules and in accordance with applicable law, each official meeting of the Henderson County Board of Commissioners shall be open to the public, and any person may attend.

For the purpose of the provisions of these rules concerning open meetings, an official meeting of the Board is defined as any gathering together at any time or place or the simultaneous communication by conference telephone or other electronic means of a majority of Board members for the purpose of conducting hearings, participating in

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deliberations, or voting upon or otherwise transacting public business within the jurisdiction, real or apparent, of the Board.

Rule 3. Closed Sessions.

Notwithstanding the provisions of Rule 2, the Board or the CCWSD Board may hold a closed session and exclude the public, but only under the following circumstances:

To prevent the disclosure of information that is privileged or confidential pursuant to the law of this State or of the United States, or not considered a public record within the meaning of Chapter 132 of the General Statutes. [ref. N.C.G.S. 143-318.11(a)(1)].

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To prevent the premature disclosure of an honorary degree, scholarship, prize, or similar award. [ref N.C.G.S. 143-318.11(a)(2)].

To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged. General policy matters may not be discussed in a closed session and nothing herein shall be construed to permit the Board to close a meeting that otherwise would be open merely because an attorney employed or retained by the public body is a participant. The Board may consider and give instructions to an attorney concerning the handling or settlement of a claim, judicial action, or administrative procedure. If the Board has approved or considered a settlement, other than a malpractice settlement by or on behalf of a hospital in closed session, the terms of that settlement shall be reported to the Board and entered into its minutes as soon as possible within a reasonable time after the settlement is concluded. [ref N.C.G.S. 143-318.11(a)(3)].

To discuss matters relating to the location or expansion of industries or other businesses in the area served by the public body. [ref N.C.G.S. 143-318.11(a)(4)].

To establish, or to instruct the Board's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract. [ref N.C.G.S. 143-318.11(a)(5)].

To consider the qualifications, competence, performance, character, fitness, conditions of appointment, or conditions of initial employment of an

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individual public officer or employee or prospective public officer or employee; or to hear or investigate a complaint, charge or grievance by or against an individual public officer or employee. General personnel policy issues may not be considered in a closed session. A public body may not consider the qualifications, competence, performance, character, fitness, appointment, or removal of a member of the public body and may not consider or fill a vacancy among its own membership except in an open meeting. Final action making an appointment or discharge or removal by a public body having final authority for the appointment or discharge or removal shall be taken in an open meeting. [ref N.C.G.S. 143-318.11(a)(6).

To plan, conduct, or hear reports concerning investigations of alleged criminal misconduct. [ref N.C.G.S. 143-318.11(a)(7).

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The Board or the CCWSD Board may go into closed session only upon motion made and adopted at an open meeting. The motion shall cite one or more of the permissible purposes listed in subsection (a) of this Rule. A motion based on reason number (1) of subsection (a) of this Rule shall also state the name or citation of the law that renders the information to be discussed privileged or confidential. A motion based on reason number (3) of subsection (a) of this Rule shall identify the parties in each existing lawsuit concerning which the public body expects to receive advice during the closed session.

ORGANIZATION OF THE BOARD

Rule 4. Organizational Meeting.

On the first Monday in December the Board shall meet at the regular meeting time and place. The Clerk to the Board of Commissioners shall call the meeting to order and shall preside until a chair is elected. If they have not already been sworn and inducted into office, any newly elected members of the Board shall take and subscribe the oath of office as the first order of business. As the second order, the Board shall elect a chair and vice chair from its members. As the third order, the Board shall approve the bonds of the Register of Deeds, the Sheriff, and the Coroner and induct them and any other newly elected county officials into office.

Rule 5. Election of the Chair.

Annual Election of the Chair. The chair of the Board shall be elected annually for the term of one year and shall not be removed from the office of chair unless he or she becomes disqualified to serve as a Board member.

Election of a Temporary Chairman.

In the event the Chairman and Vice-Chairman are both absent from a meeting of the Board, the members present may choose a temporary chairman, assuming a quorum is present. Such election of a temporary chair shall terminate with the adjournment of the meeting. No special notice shall be required for election of a Temporary Chairman pursuant to this subsection 5(b)(1).

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If appointment of a Temporary Chairman for a duration longer than one meeting is required due to the actual or anticipated unavailability of both the Chairman and Vice- Chairman, the Board may at any regular or special-called meeting elect a Temporary Chairman from among the remaining members. Such election shall be for a term certain. Compliance with the Open Meetings Law shall be the only notice required for an election of a Temporary Chairman pursuant to this subsection 5(b)(2).

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REGULAR AND SPECIAL MEETINGS

Rule 6. Regular and Special Meetings.

Regular Meetings. The Board shall hold a regular meeting on the first Monday and third Wednesday of each month. If a regular meeting day is a holiday on which the county offices are closed, the meeting shall be held on the next business day or such other succeeding business day as the Board may have previously designated in accordance with this paragraph. Regular meetings shall be held at the County Commissioners Meeting Room located at 100 North King Street and shall begin at 5:30 p.m. on the first Monday and at 9:00 a.m. on the third Wednesday. The Board may temporarily change the place or time of a particular regular meeting or of all regular meetings within a specified period by motion. A revised schedule indicating such change shall be filed with the Clerk to the Board at least seven (7) calendar days prior to the first meeting held pursuant to the revised schedule. In addition, notice of the temporary change shall be posted at or near the regular meeting place, and copies shall be sent to all persons who have requested notice of special meetings of the Board. The Board may permanently change the schedule of regular meeting by Resolution duly adopted by such board. If such a resolution is adopted, at least 10 days before the first meeting to which the resolution is to apply, the Board shall cause a copy of it to be posted on the courthouse bulletin board, and a summary of it to be published. In addition, the revised schedule indicating such permanent change(s) shall be filed with the Clerk to the Board at least seven (7) calendar days prior to the first meeting held pursuant to the revised schedule.

Special Meetings. The chair or a majority of Board Members may at any time call on a special meeting of the Board by signing a notice stating the time and place of the meeting and the subjects to be considered. The person or persons calling the meeting shall cause the notice to be posted on the front door of the County Commissioners Office and delivered to the chair and all other Board Members or left at the usual dwelling place of each member at least forty-eight hours before the meeting. In addition, the notice shall be mailed or delivered to individual persons and news organizations having requested such notice as provided in subsection (e), below. Only items of business specified in the notice may be transacted at a special meeting, unless all members are present or those not present have signed waivers.

Emergency Meetings. If a special meeting is called to deal with an unexpected circumstance requiring immediate consideration, the notice requirements of this rule do not apply. However, the person or persons calling an emergency meeting shall take reasonable action to inform the other members of the public of the meeting. Local news organizations having requested notice of special meetings as provided in subsection (e) below, shall be notified of such emergency meetings by the same method used to notify Board members. Only business connected with the emergency may be discussed at the meeting.

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Work Sessions and Committee Meetings. The Board may schedule work sessions, committee meetings, or other informal meetings of the Board or of a majority of its members at such times and concerning such subjects as may be established by resolution or order of the Board. Work sessions and other informal official meetings not held regularly are subject to the same notice requirements as special Board Meetings.

Sunshine List. Any individual and any newspaper, wire service, radio station, and television station may file a written request with the Clerk to the Board of Commissioners for notice of all special meetings of the Board. Requests by individuals must be renewed by the last day of each calendar year and are subject to a \$10.00 non-refundable annual fee; requests by news organizations must be renewed annually by date and are not subject to any fee.

The Board may adjourn any regular, special, or emergency meeting from day to day or to a day certain until the business before such Board is completed without the necessity of providing further notice provided that the time and place at which the meeting is to be continued is announced in open session.

Rule 7. All Meetings Within the County. All meetings shall be held within the boundaries of Henderson County except as otherwise provided herein.

A joint meeting with the governing board of any other political subdivision of this or any other state may be held within the boundaries of either subdivision as may be specified in the call of the meeting. At any such joint meeting, this Board reserves the right to vote separately on all matters coming before the joint meeting.

A special meeting called for considering and acting on an order or resolution requesting members of the General Assembly representing all or any portion of this County to support or oppose any bill pending in the General Assembly or proposed for introduction therein may be held in Raleigh or other such place as stated in the call of the meeting.

A retreat, forum, or similar gathering held solely for the purpose of providing members of the Board with general information relating to the performance of their public duties; provided, however, that members of the Board shall not vote upon or otherwise transact public business while in attendance at such a gathering.

While in attendance at a convention, association meeting, or similar gathering; provided, however, that any such meeting may be held solely to discuss or deliberate the Board's position concerning convention resolutions, elections of association officers and similar issues that are not legally binding upon the Board or its constituents.

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All meetings held outside the County shall be called in accordance with the procedures outlined in Rule 6 above, and shall be deemed official meetings for purpose of the North Carolina Open Meetings Law.

Rule 8. Broadcasting and Recording of Meetings.

Except as provided in this rule, any radio or television station may broadcast all or any part of an official Board meeting required to be open to the public. Any person may photograph, film, tape-record, or otherwise reproduce any part of a meeting required to be open.

Any radio or television station wishing to broadcast any portion of an official Board meeting shall so notify the County Manager no later than twenty-four hours before the meeting. If the number or requests or the quantity and size of the necessary equipment is such that the meeting cannot be accommodated in the designated meeting room and no suitable alternative site in the County Office Building is available, the County Manager may require the news media to either pool equipment and personnel or to secure and pay the costs of an alternative meeting site mutually agreeable to the Board and the media representatives.

AGENDA

Rule 9. Agenda.

After consultation with the Chairman and/or County Manager, the Clerk to the Board shall prepare the agenda for each regular, special, and emergency meeting. A request to have an item of business placed on the agenda for regular board meetings must be received in the Clerk's Office with background information by 5:00 p.m. on the Tuesday of the week prior to the meeting. Any board Member may, by a timely request, have an item placed on the agenda.

The agenda packet shall include the agenda document, any proposed ordinances or amendments to ordinances, and supporting documentation and background information relevant to items on the agenda. A copy of the agenda packet shall be made available to each Board Member at least

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twenty-four hours before the meeting. Documents in the agenda packet, exclusive of Executive Session material, if not previously available for public inspection, shall become so when packets having been delivered to each Board Member or left at his or her usual dwelling.

The Board may, by majority vote, add an item not on the agenda.

Rule 10. Informal Public Comments. The Board shall allocate on the agenda of each regular meeting at least twenty minutes for comments or questions from the public on attendance. The Chair will first recognize individuals or groups having made appointments to be heard, and then may recognize others, subject to available time. The Chair may specify the time allotted to each speaker. When the time set aside for informal public comments has expired, the Chair will recognize further speakers only upon motion duly made and adopted.

Rule 11. Consent Agenda. A consent agenda shall be prepared as part of the agenda for each regular meeting. The consent agenda shall only consist of routine items, including but not limited to road petitions, setting dates for public hearings, sale of surplus items, minor budget amendments, tax releases and refunds, and routine proclamations, and other items included for informational purposes only. The consent agenda will list each individual item with full documentation attached. The items on the consent agenda shall be approved or denied by a single motion and vote with no debate allowed. Any Board Member may have an item under the consent agenda pulled for individual debate and action. This request shall be made during the discussion/adjustment agenda section of the meeting.

Rule 12. Order of Business. At regular meeting, the Board shall proceed to business in the following order:

Discussion/Adjustment of Agenda
Consent Agenda
Informal Public Comments
Scheduled Public Hearings
Other Business.

Without objection, the chair may call items in any order most convenient for the dispatch of business.

CONDUCT OF DEBATE

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Rule 13. Powers of the Chair. The Chair shall preside at all Board Meetings. To address the Board, a member must be recognized by the Chair. The Chair shall have the following powers:

To rule on points of parliamentary procedure, including the right to rule out of order any motion offered for patently obstructive or dilatory purposes;

To determine whether a speaker has gone beyond reasonable standards of courtesy in his or her remarks and to entertain and rule on objections from other members on this ground;

To call a brief recess at any time;

To adjourn in an emergency.

Rule 14. Presiding Officer When the Chair Is Active in Debate. If the Chair wishes to debate a proposal actively, he or she may designate another Board Member or a staff member to preside. The Chair shall resume the duty to preside as soon as action on the matter is concluded.

Rule 15. Action by the Board. The Board shall proceed by motion. Any member, including the Chair, may make a motion.

Rule 16. Second Not Required. A motion shall not require a second.

Rule 17. One Motion at a Time. A member may make only one motion at a time.

Rule 18. Substantive Motion. A substance motion is out of order while another substantive motion is pending.

Rule 19. Adoption by Majority Vote. A motion shall be adopted if approved by a majority of the votes cast, unless otherwise required by these rules or North Carolina laws.

Rule 20. Debate. The Chair shall state the motion and then open the floor to debate, presiding according to these general principles:

The member making the motion or introducing the ordinance, resolution, or order may speak first.

A member who has not spoken on the issue shall be recognized before someone who has already spoken.

If possible, the debate shall alternate between opponents and proponents of the measure.

Rule 21. Procedural Motions.

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In addition to substantive proposals, the procedural motions listed in subsection (b) of this rule, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

In order of priority (if applicable) the procedural motions are:

To Adjourn. The motion may be made only at the conclusion of action on a pending matter; it may not interrupt deliberation of a pending matter.

To Recess.

To Call to Follow the Agenda. The motion must be made at the first reasonable opportunity or it is waived.

To Suspend the Rules. The motion requires a vote equal to a quorum.

To Divide a Complex Motion and Consider It By Paragraph.

To Defer Consideration. Substantive motion whose consideration has been deferred expires one hundred days thereafter, unless a motion to revive consideration is adopted.

To Call the Previous Question. The motion is not in order until there has been at least [twenty] minutes of debate and every member has had one opportunity to speak.

To Postpone to a Certain Time or Day.

To Refer to Committee. Sixty days after a motion has been referred to committee, the introducer may compel consideration of the measure by the entire Board, regardless of whether the committee has reported the matter back to the Board.

To Amend. An amendment to a motion must be germane to the subject of the motion, but may not achieve the opposite effect of the motion. There may be an amendment to the motion and an amendment to an amendment, but no further amendments. Any amendment to a proposed ordinance shall be reduced to writing.

To Revive Consideration. The motion is in order at any time within one hundred days of a vote deferring consideration. A substantive motion on which consideration has been deferred expires one hundred days after the deferral, unless a motion to revive consideration is adopted.

To Reconsider. The motion must be made at the same meeting where the original vote was taken, and by a member who voted with the prevailing side. It cannot interrupt deliberation on a pending matter but is in order any time before adjournment.

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To Prevent Reconsideration for Six Months. The motion shall be in order only immediately following the defeat of a substantive motion. It requires a vote equal to a quorum and is valid for six months or until the next regular election of County Commissioners, whichever occurs first.

Rule 22. Renewal of Motion. A defeated motion may not be renewed at the same meeting.

Rule 23. Withdrawal of Motion. A motion may be withdrawn by the introducer at any time before the Chair puts the motion to a vote.

Rule 24. Duty to Vote. It is the duty of each member to vote unless excused by a majority vote according to law. The Board may excuse members from voting on matters involving their own financial interest or official conduct. A member wishing to be excused from voting shall so inform the Chair, who shall take a vote of the remaining members. A member who fails to vote, not having been excused, shall be recorded as voting in the affirmative.

Rule 25. Prohibition of Secret Voting. No vote may be taken by secret ballot. If the Board decides to vote by written ballot, each member shall sign his or her ballot and the minutes shall record the vote of each member. These ballots shall be retained and made available for public inspection until the minutes of that meeting have been approved, when they may be destroyed.

Rule 26. Introduction of Ordinances, Resolutions and Orders. A proposed ordinance shall be deemed introduced at the first meeting where it is actually considered by the Board and its introduction shall be recorded in the minutes.

Rule 27. Adoption, Amendment, or Repeal of Ordinances. To be adopted at the meeting where it is first introduced, an ordinance or an action with the effect of an ordinance, or any ordinance amending or repealing an existing ordinance (except the budget ordinance, a bond order, or another ordinance requiring a public hearing before adoption) must be approved by all members of the Board of Commissioners. If the proposed measure is approved by a majority but not by all the members of the Board, or if the measure is not voted on at that meeting, it shall be considered at the next regular meeting of the Board. If it then or at any time thereafter within one hundred days of its introduction receives a majority of the votes cast, the measure is adopted.

Rule 28. Quorum. A majority of the Board membership shall constitute a quorum. The number required for a quorum is not affected by vacancies. If a member has withdrawn from a meeting without being excused by a majority vote of the remaining members, he or she shall be counted as present for the purposes of determining whether a quorum is present. The Board may compel the attendance of an absent member by ordering the Sheriff to take the member into custody.

Rule 29. Public Hearings. Public Hearings required by law or deemed advisable by the Board shall be set by motion of the Board, duly made and adopted, which motion shall set forth the subject, date, place, and time of the hearing. The motion setting the public hearing may also include any rules regarding the length of time allotted to each speaker and designating

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representatives to speak for large groups. At the appointed time, the Board shall go into public hearing by motion duly made and adopted, and the Chair shall call the hearing to order and preside over it. The Board may also set any rules regarding the length of time allotted to each speaker and designating representatives to speak for large groups by motion duly made and adopted at the beginning of the public hearing. When the hearing has ended, the Board shall go out of public hearing by motion duly made and adopted, and the Board shall resume the regular order of business.

Rule 30. Quorum at Public Hearings. A quorum of the Board must be present at all public hearings required by law.

Rule 31. Minutes. Minutes shall be kept of all Board Meetings.

Rule 32. Appointments. The Board uses the following procedure to make appointments to various subordinate boards and offices:

The Clerk to the Board will inform the Board of vacancies existing on boards, committees or offices at a regular meeting.

At the next regularly scheduled meeting, the Chairman shall open the floor to nominations, whereupon the members shall put forward names of possible appointees.

At the next regularly scheduled meeting, following the meetings when nominations were made, the members will debate the names. When the debate ends, the Clerk to the Board shall call the roll of the members and each shall cast his/her vote. The votes shall not be tallied until each member has voted.

The nominee(s) who receive(s) the highest number of votes shall be appointed.

If more than one appointee is to be selected, then each member shall have as many votes as there are positions to be filled. A member may cast all his votes or less than all of them, but cannot vote for a nominee more than one (1) time.

Where there is one vacancy to fill and one nomination or the same number of nominations as offices to be filled, that those persons be appointed by acclamation.

To break tie votes on nominations the Board will vote again at the next regular meeting if all members are present. If all members are not present, the vote will be rolled to the following regular meeting and will be taken at that meeting regardless of absences.

Section Break (Next Page)

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Rule 33. Reference to Robert's Rules of Order. To the extent not provided for in, and not conflicting with the spirit of these rules, the Chair shall refer to Robert's Rules of Order to resolve procedural questions.



The North Carolina State Bar
Authorized Practice Committee

208 Fayetteville St. Mall (27601)
Post Office Box 25908
Raleigh, North Carolina 27611
Telephone (919) 828-4620
Fax: (919) 834-8156
Web: www.ncbar.com

OCT 31 2005

Edward V. Zotian
1076 West Fourth Street, Suite 400
Winston-Salem, NC 27101

Re: Inquiry, Authorized Practice Committee
File number: 05AP0070

Dear Mr. Zotian:

You submitted a request for an advisory opinion regarding whether you, as an individual who is not currently an active member of the North Carolina State Bar, can represent others before a city Planning Board or before the City Council with respect to petitions for rezoning. Your inquiry is for the city of Winston-Salem and Forsyth County at this point, but you state that the rezoning petition proceedings are uniform throughout the state.

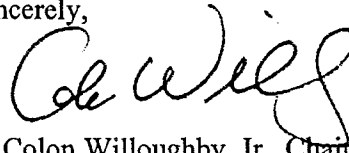
The Committee has considered your inquiry at its October 19, 2005 meeting, and makes the following findings based upon information provided by the City Attorney for Winston-Salem, Ronald Seeber. General use zoning matters before the Planning Board and the City Council are considered legislative in nature and are conducted accordingly. Nobody is sworn in and there is no presentation of evidence by parties. At both the Planning Board level and the City Council level, there is a period of time allocated for public comment, during which anybody can be heard either in favor of the petition or against it. Such meetings are not quasi-judicial in nature and it is possible for a person who is not an active member of the North Carolina State Bar to speak for another at such a meeting or assist another with such a matter without engaging in the unauthorized practice of law. The Committee cautions you, however, that the general prohibitions of the unauthorized practice of law statutes still apply. A person who is not an active member of the North Carolina State Bar cannot hold himself out as competent or qualified to give legal advice or counsel, cannot provide legal advice to another, and cannot draft legal documents for another. N.C. Gen. Stat. §§ 84-2.1 and 84-4.

The City Attorney distinguished special use permit proceedings from general use proceedings. He stated that the special use permit proceedings are considered quasi-judicial in nature. Evidence is formally presented. Witnesses are sworn in, provide testimony, and are subject to cross-examination. Given the quasi-judicial nature of such proceedings, the Committee finds that it would be the unauthorized practice of law for an individual who is not an active member of the North Carolina State Bar to appear for another at such a meeting or proceeding or to otherwise assist or represent another at such a meeting or proceeding.

C. Colon Willoughby, Jr., Chair
Samuel F. Davis, Vice-Chair

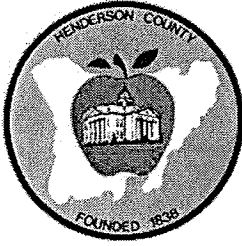
Thank you for your inquiry in this matter. Please contact the Committee's counsel,
Jennifer Porter, with any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "C. Colon Willoughby, Jr.", written in black ink.

C. Colon Willoughby, Jr., Chair
Authorized Practice Committee

Cc: Ronald Seeber



Office of the County Attorney Henderson County, North Carolina

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Facsimile (828) 697-4536

Charles Russell Burrell
County Attorney

27 December 2005

Ms. Alice N. Mine
North Carolina State Bar
Post Office Box 25908
Raleigh, NC 27611-5908

Mr. C. Colon Willoughby, Jr., Chair
North Carolina State Bar Unauthorized Practice Committee
Post Office Box 25908
Raleigh, NC 27611-5908

RE: *Board Rules and Procedures*
Our file number File BOC00277

Dear Ms. Mine and Mr. Willoughby:

This is in reference to the 31 October 2005 letter from Mr. Willoughby and the State Bar Unauthorized Practice Committee to Edward V. Zotian, regarding the practice of unlicensed "representatives" in quasi-judicial hearings. After conferring with my colleague, Sam Fritschner, who is the City Attorney for Hendersonville, I request guidance from both of you and the State Bar on several issues.

- 1) *"[T]he Committee finds that it would be unauthorized practice of law for an individual who is not an active member of the North Carolina State Bar to appear for another at . . . [a quasi-judicial] proceeding or to otherwise assist or represent another"*

The foregoing is from Mr. Willoughby's letter.

It is clear from the foregoing that, for example, the developer (if an individual) can represent himself, but if corporate or other form of business association, the developer must have an attorney to present its case before the Board. However, in a typical quasi-judicial proceeding for a special use permit before our County's Board of Commissioners, the County's planning department is made a party to the proceeding (along with the developer and anyone else who can demonstrate a sufficient interest in the outcome of the proceeding).

Does this prohibition include non-attorney staff members of the local government's department involved in the hearing? Are such staff members barred from presenting their department's position on the subject of the hearing?

- 2) If the answer to 1), above is "yes", are there circumstances where a licensed attorney from the County Attorney's office could represent planning staff in such a hearing while another licensed attorney from the County Attorney's office advises the governing board hearing the proceeding, or would outside counsel have to be hired to represent one or the other?

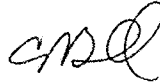
In asking this, I note that while members of the governing board have a duty to be impartial in hearing this matter, they are often also the ultimate supervisors of the staff whose position the attorney would present (as well as the attorney).

Ms. Alice N. Mine
Mr. C. Colon Willoughby, Jr.
27 December 2005
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3) What duty would a licensed attorney have if in the position of observing the unauthorized practice of law in this context? I note that in this context, not only am I in advising the governing board a licensed attorney, but in a number of situations members of the board itself are licensed attorneys as well.

Please do not hesitate to contact me if you have any questions of me. With sincere thanks, I am

Very truly yours,



Digitally signed by Charles Russell Burrell
DN: cn=Charles Russell Burrell, c=US,
o=Legal Department, ou=Henderson
County,
email=rburrell@hendersoncountync.org
Date: 2005.12.27 16:40:22 -05'00'

Charles Russell Burrell

CRB:sf

cc: Samuel H. Fritschner, City Attorney For Hendersonville, North Carolina