



**TOWN OF ARCHER LODGE
RESOLUTION ADOPTING ARCHER LODGE RULES OF PROCEDURE
FOR THE TOWN COUNCIL, BOARDS / COMMITTEES**

WHEREAS, the stability and proper operation of democratic representative government depends upon the continuing consent of the governed, upon the public confidence in the integrity of the government and upon responsible exercise of the trust conferred by the people. Government decisions and policy must be made and implemented through proper channels and processes of governmental structure. The purpose of the “**Archer Lodge Rules of Procedure**,” incorporated herein, is to provide a comprehensive and uniform set of rules of procedures under which the Town Council, Boards/Committees will conduct meetings.

WHEREAS, the “**Archer Lodge Rules of Procedure**” comply with mandated law;

NOW, THEREFORE, BE IT RESOLVED that the Archer Lodge Town Council hereby adopts the “**Archer Lodge Rules of Procedure**.”

DULY ADOPTED ON THIS 1ST DAY OF NOVEMBER 2021 WHILE IN REGULAR SESSION.

(SEAL)

Matthew B. Mulhollem
Mayor

ATTEST:

 (SEAL)
Kim P. Batten
Town Clerk



TOWN OF ARCHER LODGE RULES OF PROCEDURE

A. ORGANIZATIONAL MEETING

At the first regular meeting in December, following a general election in which Council members are elected, the newly elected members shall take and subscribe to the oath of office, immediately following dispensing with any routine unfinished business of the prior council (such as approval of minutes). As the next order of business, the Council shall elect a Mayor Pro Tempore and conduct any other organizational business deemed appropriate (such as committee appointments).

At the first regular meeting of the Planning Board and the Board of Adjustment in January, the Board shall elect, from its members, a Chair and Vice-Chair, adopt meeting agenda format and meeting schedule. The Chair shall preside over the meetings and retain the ability to make and second motions and vote on all matters before the Board. The Vice-Chair shall fulfill the role of Chair in the absence or disability of the Chair.

B. OFFICE OF MAYOR

The Mayor shall preside at all meetings of the Archer Lodge Town Council. To address the Town Council, a member must be recognized by the Mayor. The Mayor shall have the following powers:

1. To rule motions out of order, including any motion patently offered for obstructive or dilatory purposes;
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in their remarks and to entertain the rule on objections from other members on this ground;
3. To entertain and answer questions of parliamentary law or procedure;
4. To call a brief recess at any time;
5. To adjourn in an emergency;
6. To vote on matters before the Council in the event of a tie number of votes by members of the Town Council.

At the organization meeting, Council shall elect from among its members, a Mayor Pro-tempore to serve at the pleasure of the Council. The election shall be for a two (2) year term and the official shall perform the duties of Mayor during any absence or disability of the Mayor. If the Mayor Pro-tempore should need to fulfill the duties of the Mayor, he or she shall retain the duties of Councilmember including voting on all matters and shall count towards the establishment of a quorum.

C. QUORUM

A majority of the actual membership of the Council, Planning Board, Board of Adjustment, excluding vacant seats, shall constitute a quorum. A member who has withdrawn from a meeting without being excused by a majority vote of the remaining members present shall be counted as present for the purpose of determining whether a quorum is present.

A quorum of the Council shall be required at all public hearings required by state law. If a quorum is not present, the hearing shall be deferred to the next regular public hearing meeting, without further advertisement.

D. REGULAR MEETING

The Archer Lodge Town Council shall hold its Regular Meeting on the first Monday of each month, except that if a regular meeting is a legal holiday, the meeting shall be rescheduled. All meetings shall be held in the Jeffrey D. Barnes Council Chambers unless notice is otherwise given.

E. AGENDA

The Town Clerk shall prepare the agenda for the meeting. Any elected Town Council member may direct the Town Clerk to place an item of business on the agenda. For the agenda to be published and distributed in a timely manner, such directive needs to be received on or before the due date requested by the Town Clerk.

Requests for items of business to appear on the agenda from individuals or organizations will be placed on the agenda under Public Comment or Public Presentations, at the discretion of the Town Clerk and Town Administrator. Any request for an item of business to appear on the agenda from individuals or organizations must be received at least one (1) week before the meeting. The agenda should include all items, particularly action items and announcements, that are expected to be considered. Any item placed on the agenda, whether to be discussed openly or approved in consent, should have an exhibit sheet accompanied by supporting documents. These exhibit sheets should have a concise but understandable description of what the council is to consider.

This procedure would also be required of any item placed on the agenda during the "approval of agenda" section of the Town Council meeting. Every effort should be made to not add an agenda item during the meeting. However, where it is deemed necessary, an exhibit sheet with supporting documentation should be provided to the Mayor, each Councilmember, the Town Administrator, and the Town Attorney prior to a vote to amend the agenda. No recommendation for action on any item should come before the Council without written justification and supporting information.

Each Councilmember shall receive a copy of the draft agenda and supporting exhibits in advance of the regularly scheduled town council meeting.

F. ORDER OF BUSINESS

In general, items shall be placed on the regular agenda according to the Order of Business. Unless modified by council vote, the order of business for each regular meeting shall be as follows:

Welcome/Call to Order
 Invocation
 Pledge of Allegiance
 Approval of Agenda
 Consent Agenda
 Open Forum/Public Comments
 Recognitions/Presentations
 Discussion and Possible Action Items
 Town Attorney's Report
 Town Administrator's Report
 Finance Officer/Town Clerk Report
 Planning/Zoning Report
 Mayor's Report
 Council Members' Remarks
 Adjournment

Boards and/or Committees may, from time to time, need to make a report to the Town Council or recommend action to the Town Council. Reports or recommendations from any Board or Committee to the Council will be placed in the "Discussion and Possible Action Items" portion of the agenda.

G. PUBLIC ADDRESS TO THE COUNCIL/BOARD

Any individual or group may address the Council/Board during the Public Comment portion of the meeting.

A fixed standard time limit shall be established under these rules, announced at the beginning of each public comment session whether at a regular meeting (3 min) or a public hearing (5 min), and strictly adhered to with the Town Clerk being a timekeeper.

A standard statement should be read prior to each of these comment sections that explain to the speaker and audience those comments are welcome but certain aspects (personnel for an example) cannot be discussed. The speaker should also be told that, in general, the Council will take comments under consideration but will probably have no comment in that meeting.

In the event the Mayor determines that numerous or lengthy comments will be offered, he or she may, in order to ensure that all positions are heard:

1. Designate a spokesperson for a group of persons propounding a certain position;

2. Arrange for delegates from any such group to speak whenever the numbers of such persons propounding a particular position exceeds the capacity of the Town Council Chambers; and
3. Arrange for the Johnston County Sheriff's Department to ensure that such meeting is conducted in an orderly manner.

H. PUBLIC HEARING

Public hearings required by law or deemed advisable by the Council shall be organized by special order, adopted by a majority vote that sets forth the subject, date, place and time of the hearing, as well as any rules regarding the length of time for each speaker, and other pertinent matters. The rules may include, but are not limited to:

1. Fixing the maximum time allotted to each speaker;
2. Providing for the designation of spokespersons for groups of persons supporting or opposing the same positions;
3. Providing for the selection of delegates from groups of persons supporting or opposing the same positions when the number of persons wishing to attend the hearing exceeds the capacity of the council chambers (so long as arrangements are made for those excluded from the council chambers to listen to the hearing); and
4. Provide for the maintenance of order and decorum in the conduct of the hearing.

All notice and other requirements of the Open Meetings Law applicable to Council/Board meetings shall also apply to public hearings at which a majority of the Council/Board is present. A public hearing for which any notices required by the Open Meetings Law or other provisions of the law have been given, may be continued to a time and place certain without further advertisement. The requirements of Rule 2(c) shall be followed in continuing a hearing at which a majority of the Council/Board is present.

At the time of the hearing, the Mayor/Chair, or his or her designee, shall call the hearing to order and then preside over it. When the allotted time expires or when no one wishes to speak who has not done so, the presiding officer shall declare the hearing closed.

In order to provide sufficient time for all public hearings and speakers, a public hearing cannot serve as a question and answer time. Town staff will direct in all notices required by law, that in order to allow sufficient time for all public hearings, any questions or research should be conducted by any such interested person(s) in advance of the public hearing. Town staff may facilitate the public's edification by using the Town's website or maintaining a printed file accessible to the public which contains relevant information about the subject matter of the public hearing.

Required Quasi-Judicial Public hearings and actions taken the Town Council or Board of Adjustment shall be in accordance with the Appendix, Division 1 – Quasi-Judicial Procedural Guidelines, and is incorporated herein.

II. ACTIONS TAKEN BY COUNCIL, PLANNING BOARD, AND BOARD OF ADJUSTMENT IN MEETINGS (Planning Board and Board of Adjustment shall be referred to as “Boards” or “Board”)

A. MOTION

The Council and Boards shall proceed by motion. Any member may make a motion.

B. SECOND REQUIRED

A motion shall require a second. Any motion without a second shall fail.

C. ONE MOTION AT A TIME

A member may make only one motion at a time.

D. SUBSTITUTE MOTION

A substitute motion is out of order while another substantive motion is pending.

E. ADOPTION BY MAJORITY VOTE

A motion shall be adopted by a majority of the votes cast, a quorum being present, unless otherwise required by the Unified Development Ordinance, or the laws of North Carolina.

F. DEBATE

The Mayor (for Council) or Chair (for Boards) shall open the floor to discussion among the members on each motion, after a second is received, and shall preside over the discussion according to the following general principles:

1. The introducer (the member who makes the motion) is entitled to speak first.
2. A member who has not spoken on the issue shall be recognized before a member who has already spoken.
3. To the extent possible, the debate shall alternate between opponents and proponents of the measure.

G. RATIFICATION OF ACTIONS

To the extent permitted by law, Council or Boards may ratify actions taken on its behalf but without its prior approval. A motion to ratify is a substantive motion.

H. PROCEDURAL MOTIONS

In addition to substantive motions, the following procedural motions, and no others, shall be in order. Unless otherwise noted, each motion is debatable, may be amended, and requires a majority vote for adoption.

1. 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. A motion to adjourn (or recess) to a time and place certain shall also comply with the requirements of Rule 2(c).
2. To Take a Brief Recess.
3. Call to Follow the Agenda. The motion must be made at the first reasonable opportunity, or it is waived.
4. To Suspend the Rules of Procedure. The motion requires for adoption, a vote equal to two-thirds of the actual membership of the Council or (Chair) for Boards, excluding vacant seats. The Council or Board may not suspend provisions of the rules that state requirements imposed by law on the Council or Board.
5. To Divide a Complex Motion and Consider It by Paragraph.
6. To Defer Consideration. A substantive motion, whose consideration has been deferred, expires one hundred (100) days thereafter unless a motion to revive consideration is adopted.
7. Call of the Previous Question. This motion is not in order until there has been at least ten (10) minutes of debate and every member has had an opportunity to speak once.
8. To Postpone to a Certain Time or Day.
9. To Refer to a Board/Committee. Sixty (60) days after a motion has been referred to a committee, the introducer may compel consideration of the measure by the entire Council/Board, whether the committee has reported the matter to the Council/Board.
10. To Amend. An amendment to a motion must be pertinent to the subject matter of the motion. An amendment is improper if adoption of the amended motion has the same effect as rejection of the original motion. A motion may be amended, and that amendment may be amended, but no further amendments may be made until the last-offered amendment is disposed of by a vote. A motion to amend may be made at any time prior to the call for a vote of the original motion.
11. To Revive Consideration. The motion is in order any time within one hundred

(100) days after the day of a vote to defer consideration. A substantive motion on which consideration has been deferred expires one hundred (100) days after the deferral unless a motion to revive consideration is adopted.

12. To Reconsider. This motion must be made by a member who voted with the prevailing side, and only at the meeting during which the original vote was taken. The motion cannot interrupt deliberation on a pending matter but is in order at any time before actual adjournment.
13. To Rescind or Repeal. The motion is not in order if rescission or repeal of an action is forbidden by law.
14. To Prevent Reconsideration for Six (6) Months. The motion shall be in order immediately following the defeat of a substantive motion and at no other time. The motion requires for adoption, a vote equal to two-thirds of the actual membership of the Council or Board, excluding vacant seats. If adopted, the restriction imposed by the motion remains in effect for six (6) months or until the next organizational meeting of the Council or Board, whichever occurs first, unless otherwise provided in the Unified Development Ordinance.

I. RENEWAL OF MOTION

A motion that is defeated may be renewed at any later meeting unless a motion to prevent reconsideration has been adopted.

J. WITHDRAWAL OF MOTION

A motion may be withdrawn by the introducer at any time before a vote.

K. DUTY TO VOTE

Every member must vote unless excused by the remaining members according to State law. A member who wishes to be excused from voting shall so inform the Mayor/Board Chair, who shall take a vote of the remaining members. No member shall be excused from voting except upon matters involving the consideration of his own financial interest or official conduct. In all other cases, unless otherwise stated in Section II, subsection Q., a failure to vote by a member who is physically present in the Council Chambers or who has withdrawn without being excused by a majority vote of the remaining members present shall be recorded as an affirmative vote.

L. INTRODUCTION OF ORDINANCES

A proposed ordinance shall be deemed to be introduced on the date the subject matter is first voted on by Council or Boards.

M. ADOPTION OF ORDINANCES

An affirmative vote equal to a majority of all members of the Council not excused

from voting on the question shall be required to adopt an ordinance or to take any action that has the effect of an ordinance, or to make, ratify, or authorize any contract on behalf of the Town.

No ordinance shall be adopted unless it has been reduced to writing before a vote on adoption is taken.

N. ADOPTION OF THE BUDGET ORDINANCE

Notwithstanding the provisions of any Town Charter, general law, or local act:

1. Any action with respect to the adoption or amendment of the budget ordinance may be taken at any regular or special meetings of Council by a simple majority of those present and voting, a quorum being present;
2. No action taken with respect to the adoption or amendment of the budget ordinance need be published or is subject to any other procedural requirement governing the adoption of ordinances or resolutions by Council;
3. The adoption and amendment of the budget ordinance and the levy of taxes in the budget ordinance are not subject to the provisions of any town charter or local act concerning initiative or referendum.

During the period beginning with the submission of the budget to Council and ending with the adoption of the budget ordinance, the Town Council may hold any special meetings that may be necessary to complete its work on the budget ordinance. Except for the notice requirements of the Open Meetings Law, which continue to apply, no provision of law concerning the call of special meetings applies during that period so long as (a) each Member of Council has actual notice of each Special Meeting called for the purpose of considering the budget, and (b) no business other than consideration of the budget is taken. This rule does not allow and may not be construed to allow the holding of closed meetings or executive session by the Council if it is otherwise prohibited by law from holding such a meeting or session.

O. CLOSED SESSIONS

Council or Boards may hold closed sessions as provided by law (See N.C.G.S. § 143-318.11). Council or Boards shall only commence a closed session after a motion to go into closed session has been made and adopted during an open meeting. The motion shall state the general purpose of the closed session and must be approved by the vote of the majority of those present and voting. Council shall terminate the closed session by a majority vote.

Only those actions specifically authorized by statute may be taken in closed session. A motion to adjourn or to recess to a time and date certain shall not be in order during a closed session. This does not preclude a brief recess.

P. SPECIAL, EMERGENCY, & ADJOURNED MEETINGS

1. Special Meetings. The Mayor, the Mayor Pro-tempore, or any two members of the Town Council may at any time call a special Council meeting by signing a written notice stating the time and place of the meeting and the subject(s) to be considered. At least forty-eight (48) hours before a special meeting is called in this manner, written notice of the meeting stating its time and place and the subjects to be considered shall be: (a) delivered to the Mayor and each Councilmember or left at his or her usual dwelling place; (b) posted on the Town's principal bulletin board; and (c) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the Town Clerk.

Only those items of business specified in the notice may be transacted at a Special Meeting called in this manner unless all members are present or have signed a written waiver of notice.

A Special Meeting may also be called or scheduled by vote of the Council in open session during another duly called meeting. The motion or resolution calling or scheduling the Special Meeting shall specify its time, place, and purpose. At least forty-eight (48) hours before a Special Meeting is called in this manner, notice of the time, place, and purpose of the meeting shall be (a) posted on the council's principal bulletin board; and (b) mailed or delivered to each newspaper, wire service, radio station, television station, and person who has filed a written request for notice with the Town Clerk. (Such notice shall be mailed or delivered at least forty- eight (48) hours before meeting to each Council Member and to the Mayor if he or she was not present at the meeting at which the Special Meeting was scheduled.)

2. Emergency Meetings. The Mayor, the Mayor Pro-tempore, or any two members of the Town Council may at any time call an Emergency Council Meeting by signing a written notice stating the time and place of the meeting and the subjects to be considered. The notice shall be delivered to the Mayor and each Council Member or left at his or her usual dwelling place at least six (6) hours before the meeting. Notice of the meeting shall be given to each local newspaper, local wire service, local radio station, and local television station that has filed a written emergency meeting notice request, which includes the newspaper's, wire services, or station's telephone number, with the Town Clerk. This notice shall be given by the same method used to notify the Mayor and Council Members and shall be given at the expense of the party notified.

Emergency Meetings shall only be called because of general unexpected circumstances that require immediate consideration by the Town Council. Only business connected with the emergency may be considered at an emergency meeting.

3. Adjourned (or recessed) Meetings. A properly called regular, special, or emergency meeting may be adjourned (or recessed) by a procedural motion made and adopted as provided in Rule 17(a) in open session during the regular, special, or emergency meeting. The motion shall state the time and place when the meeting will reconvene. No further notice need be given of an adjourned (or recessed) session of a properly called regular, special, or emergency meeting.
4. Work Sessions. A work session of the Town Council shall be an open public meeting wherein the Council informally reviews material for and discusses items of importance to the Town and upcoming agenda items, but no official decisions or conclusions are made, and no action is taken. In general, items placed on the agenda shall be as follows:

Welcome/Call to Order

Invocation

Old Business

New Business

Adjournment

Q. VIRTUAL MEETINGS AND ATTENDANCE

Virtual meetings shall apply to any meeting held remotely. Virtual attendance shall apply to both telephonic and video attendance by a Council or Board member. Virtual meetings shall be reserved for declared state of emergencies and shall be conducted pursuant to N.C.G.S. § 166A-19.24. All Council and Board member shall make all efforts to attend meetings in person. If virtual attendance is necessary, the member requesting virtual attendance shall notify the Mayor or Chair and Town Clerk twenty-four (24) hours prior to the start of the meeting, unless advance notice is impracticable. Virtual attendance shall be preferable to the member not participating in the meeting. If a member is attending a meeting virtually, they shall be counted towards a quorum as if they were physically present in the Council chambers at all times they are in virtual attendance. At the beginning of any meeting where a member is in virtual attendance, the Mayor or Chair shall announce that the member is in virtual attendance. Voting by members in virtual attendance shall be made by roll call. In the event that a member who is in virtual attendance should lose connection, they will not be counted as having been present for any subsequent votes.

R. MEETING MINUTES

Full and accurate minutes of the Council or Board Meetings shall be kept and shall be open to the inspection of the public, except as otherwise provided in this rule. The results of each vote shall be recorded in the minutes and the "aye's and "no's upon any question shall be taken.

Full and accurate minutes shall be kept of all actions taken during closed sessions. Minutes and other records of a closed session may be withheld from public inspection so long as public inspection would frustrate the purpose of the closed session.

S. VACANCIES

A vacancy that occurs in an elective office of a Town shall be filled by appointment of the Town Council. If the term of the office expires immediately following the next regular municipal election, or if the next regular municipal election will be held within 90 days after the vacancy occurs, the person appointed to fill the vacancy shall serve the remainder of the unexpired term. Otherwise, a successor shall be elected at the next regularly scheduled municipal election that is held more than 90 days after the vacancy occurs, and the person appointed to fill the vacancy shall serve only until the elected successor takes office. The elected successor shall then serve the remainder of the unexpired term. If the number of vacancies on the Council is such that a quorum of the Council cannot be obtained, the mayor shall appoint enough members to make up a quorum, and the Council shall then proceed to fill the remaining vacancies. If the number of vacancies on the Council is such that a quorum of the Council cannot be obtained and the office of mayor is vacant, the Governor may fill the vacancies upon the request of any remaining member of the Council, or upon the petition of any five registered voters of the city. Vacancies in appointive office shall be filled by the same authority that makes the initial appointment.

APPENDIX

DIVISION 1: QUASI-JUDICIAL PROCEDURAL GUIDELINES

I. QUASI-JUDICIAL HEARING PROCEDURAL GUIDELINES

1. Purpose and General Information. Quasi-judicial decisions arise in a variety of local government settings. In Archer Lodge, the Town Council holds quasi-judicial hearings for special use permits, certain subdivision, and site plan applications and for certain other applications. The Board of Adjustment ("BOA") holds quasi-judicial hearings for variance and reasonable accommodation requests and appeals of staff decisions, including zoning and minimum housing appeals. The Town Council and BOA are collectively referred to in this policy as the "Hearing Body." The Archer Lodge Unified Development Ordinance is referred to as the "UDO."

During a quasi-judicial hearing, the Hearing Body must hold an evidentiary hearing and make its decision based on the written and oral evidence presented. Unlike legislative decisions, a quasi-judicial decision must be based solely on the evidence presented and cannot be based on opinions of members of the Hearing Body. Put differently, a quasi-judicial decision is one that requires the Hearing Body to find facts and exercise discretion when applying the standards of an ordinance to a specific situation.

This policy is adopted to provide flexible guidance for the conduct of quasi-judicial hearings. It is designed to be used in conjunction with the other Rules of Procedures. This policy is based on North Carolina law but is not designed to create any additional rights or obligations and does not provide any procedural rights to any person. The failure of Hearing Body or any other person to adhere to this policy shall not affect the validity of any hearing, action taken, or decision made. To the extent there is conflict or any discrepancy between these recommended procedures and the NC General Statutes, case law, or Town ordinances (collectively "law"), the law shall prevail.

2. Who May Appear at the Hearing? Corporations must be represented by a licensed attorney. Non-corporate applicants and individuals opposed to the application that have standing may represent themselves or be represented by an attorney, legal counsel is strongly advised. Any party may call expert or lay witnesses to testify. Engineers, architects, real estate agents, planners and other non-attorneys may only appear as expert witnesses and may not represent an applicant or those opposed to an application, unless the representation is approved by the Hearing Body before witnesses are sworn and evidence is introduced. The Hearing Body reserves the right to deny non-attorney

representation for non-corporate parties.

3. Prior to the Hearing. All exhibits and evidence to be introduced during the hearing and names and addresses of all lay and expert witnesses should be submitted to the Town at least ten (10) days before the hearing date and electronic PDF files are preferred. The Town may designate staff members responsible for processing each application (sometimes 'Staff Representative') as the person to whom such exhibits should be submitted. Copies should also be provided to any other known parties. By receiving exhibits and evidence prior to the hearing the Town is able to post such exhibits with the agenda. Failure to provide evidence or exhibits by the date and time specified shall mean the applicant or other party is responsible for providing a sufficient number of copies of such exhibits at the hearing. If possible, electronic submissions should meet ADA accessible guidelines (i.e., screen-reader friendly PDF, text file format, etc.). Photos and illustrations should be provided as .jpeg or .tiff format images. These .jpeg or .tiff images may be embedded in the PDF or text file provided but must also be provided as separate files.
 - (a) If prior to the hearing an applicant or a person opposed to an application has questions about the process, he or she may contact the Staff Representative for more information. It is inappropriate for anyone to contact any member of the Hearing Body.
 - (b) Prior to the hearing the Staff Representative, applicant or other person may suggest time limits for testimony and agreement on other procedural matters. The applicant may also request a continuance prior to the hearing by contacting the Staff Representative.
4. Responsibilities of the Presider. The Mayor (if the hearing is before the Town Council) or the Chair of the BOA (if the hearing is before that body), shall preside over the hearing (the "Presider"). The Presider must recognize speakers and members of the Hearing Body before they are heard. The Presider may rule on any objections or requests from participants in the hearing regarding the procedure of the hearing or evidence presented. The Presider may rule on the competence (i.e., the admissibility) of evidence with or without an objection from a participant. The Presider should allow every speaker to be heard but may limit and/or cut off evidence or testimony that is irrelevant, repetitive, incompetent, inflammatory, or hearsay. The Presider may place reasonable and equitable limitations on the presentation of evidence, arguments, and cross-examination of witnesses so that the matter at hand is heard without undue delay.

The Presider may impose additional requirements and take actions as maybe necessary or desirable to facilitate the fair and efficient conduct of the hearing and other agenda items. Additional requirements or actions may include requiring witnesses to sign up in advance of the hearing, allocating reasonable time for each side to present their testimony and evidence, limiting the overall time for the hearing, and delaying a hearing to a later point in the agenda or

continuing the hearing to a later meeting.

5. Responsibilities of the Hearing Body. Members of the Hearing Body must make their decision solely on the written and oral evidence presented and cannot consider information obtained through independent research or undisclosed ex parte communications. Members may, however, view the premises at issue before the hearing so long as at the commencement of the hearing the members disclose the site visit and any facts or information collected from the site visit that is relevant to the case. Likewise, at the commencement of the hearing, or during the hearing if it only becomes evident then, members must disclose any specialized knowledge they may have that is relevant to the case.

Members of the Hearing Body should refrain from ex parte communications about upcoming or ongoing cases with any parties or other members of the Hearing Body, and at the commencement of the hearing, members must disclose ex parte communications. Members may seek and receive general, technical information pertaining to the case from Town staff prior to the hearing, but Town staff should provide the information to all during the hearing before the entire Hearing Body.

6. Responsibility of Those Who Testify. In addition to other responsibilities of the applicant and others who testify ("witnesses"), witnesses shall observe time limits imposed on testifying unless the Presider grants additional time. Witnesses shall avoid hearsay evidence. Hearsay evidence is testimony that the witness does not know of his or her own personal knowledge, including that which someone else told the witness and the use or introduction of signed petitions and letters. Witnesses shall focus their testimony on the applicable criteria. Unless they are a qualified expert, witnesses are not competent to testify about the impact of a proposed land use on the value of nearby property, the danger to public safety resulting from increases in traffic or other matters that require special training or expertise like the level of noise that will be generated. Non-expert witnesses are competent to testify about facts known to them and their opinion so long as it is not about the impact on property values, the danger to public safety from increases in traffic, and other matters that require special training or expertise.
7. Standing. Only parties with standing may present arguments or evidence at the evidentiary hearing. A party with standing is an aggrieved party who would suffer special damages from the outcome of the matter. The following have standing as a party:
 - (a) A person with a legal interest in the subject property (this includes ownership; lease interest; an option or contract to purchase the property; or an interest created by an easement, restriction, or covenant),
 - (b) The applicant before the decision-making board,
 - (c) A person who will suffer special damages as a result of the decision (these damages must be ones that are distinct from those damages to

the public at large), and

- (d) An association organized to promote the interest of a particular area (such as homeowners' association or community associate) so long as at least one member would have standing as an individual and the association was not created in response to the development at issue.
8. Conduct of the Hearing. The order of business for each hearing should be as follows:
- (a) All persons, including Town staff, who intend to present evidence must be sworn in.
 - (b) The Presider shall call the case as advertised on the agenda. The Presider may state something along the lines of:
 - i. This matter requires this body to conduct a quasi-judicial hearing, which means the body must find facts and base its decision upon the application of the ordinance standards/criteria and the competent, substantial, and material evidence received during this hearing. All testimony must be competent and not repetitious. Speculative opinions and general expressions of fear of potential increases in crime, traffic or impacts on property values do not constitute competent evidence.
 - (c) If the applicant is to be represented by anyone other than a licensed attorney, the applicant shall request the consent of the Hearing Body for such representation as set forth in Section 2 above.
 - (d) Members of the Hearing Body should disclose the following:
 - i. Any site visits;
 - ii. Ex parte communications;
 - iii. Specialized knowledge they have relevant to the case;
 - iv. Whether they have a fixed opinion that is not susceptible to change based on what they learn at the hearing;
 - a) Whether they have a close familial, business or other relationship with the applicant or other affected person;
 - b). Whether they have a financial interest in the outcome of the case; and
 - c). Any other information relevant to determining whether a conflict of interest exists.
 - (e) If necessary, the Hearing Body will vote on recusal of members at this

time. A member shall not participate in the hearing if the member has a fixed opinion prior to the hearing that is not susceptible to change; has engaged in undisclosed ex parte communications; has a close family, business or other associational relationship with the applicant or an affected person; or has a financial interest in the outcome of the matter.

- (f) The applicant or other affected person (having been sworn in) shall present any objections they may have to a member's participation. If an objection is made to the participation of a member based on personal bias or other ground for disqualification, the Hearing Body shall determine the matter as part of the record.
- (g) The Presider shall open the hearing.
- (h) The Staff Representative should present the staff report.
- (i) Evidence and the appropriate number of exhibits that were not provided by the deadline in advance of the hearing shall be given to the Clerk and any opposing party. The Clerk shall number the exhibits if they have not already been numbered and shall distribute to Hearing Body. If an exhibit is presented it becomes part of the record and will not be returned.
- (j) If all parties are represented by attorneys, the applicant, followed by any opposing party, may present a brief opening statement.
- (k) The applicant shall present the arguments and evidence in support of the application. The applicant shall address applicable approval criteria. Members of the Hearing Body or any attorney representing the Hearing Body, or the Town may ask questions for clarification. If all parties are represented by attorneys, opposing parties may ask questions of (cross-examine) the applicant (if the applicant testifies) or supporting witnesses at this time. If those opposed to the applicant are not represented by attorneys, the Presider may prefer to delay cross-examination until all sides present their arguments and evidence.
- (l) Persons opposed to granting the application shall present the arguments and evidence against the application based on the applicable approval criteria. Members of the Hearing Body or any attorney representing the Hearing Body, or the Town may ask questions for clarification. If all parties are represented by attorneys, the applicant may cross-examine the speaker or opposing witnesses at this time.
- (m) The Presider will provide Town staff and/or their attorney an opportunity to present relevant arguments or evidence.
- (n) If cross-examination was not done at the conclusion of each side's case, then both sides will be permitted to cross examine previous witnesses.

Those who oppose the application should cross examine the applicant (if the applicant testified) and the applicant's supporting witnesses first. Then the applicant may cross examine those witnesses who spoke in opposition to the application. Both sides will be permitted to present rebuttals to opposing testimony. Both sides may, as necessary, object to incompetent evidence and testimony (such as improper lay opinion testimony and hearsay) offered by other witnesses. The Presider may rule on such objection or take it under advisement.

- (o) After all evidence has been presented, the Presider may ask the parties if there is additional relevant information that has not been presented that would make a continuance in order. The Presider will entertain objections and rule on the admissibility of the evidence or exhibit.
- (p) Unless the Presider continues the public hearing to the next regularly scheduled quasi-judicial meeting of the Hearing Body or to a publicly stated date, time and location, the Presider shall close the period for public discussion. The Hearing Body shall publicly discuss the case without further general input from the public. Members of the Hearing Body, however, may seek clarification or ask questions of persons previously sworn on any piece of evidence presented. Cross-examination and rebuttals may be made only on new evidence presented. The hearing shall be closed after Hearing Body deliberations are complete.
- (q) Unless the hearing has been continued, the Hearing Body shall render a decision on the matter, or, if it so chooses, recess the case to the next regularly scheduled quasi-judicial meeting of the Hearing Body or to a publicly stated date, time, and location. The Town Council may approve an application by vote of a majority of the members. The BOA may approve variances only by a vote of four-fifths of the members of the Board (excluding vacant positions and members who are disqualified from voting if there are no qualified alternates available).
- (r) Any motion to approve an application that does not receive the required majority or super-majority vote means the application has been denied. If an application has been denied, findings of fact and conclusions must be made to support that decision.
- (s) The Hearing Body may attach conditions to the approval of any application in accordance existing state law and Town Code.
- (t) A written decision must be approved for every quasi-judicial application, generally at the next scheduled meeting of the Hearing Body. As part of the written decision, the Hearing Body must make findings of fact and conclusions as to applicable standards and any conditions (See Section X).

9. Burden of Proof, Testimony, and Evidence.

- (a) Burden of Proof for Special Use Permits, and Subdivision/Site Plan Approvals or other required applications: The applicant has the burden of producing sufficient substantial, competent, and material evidence for the Hearing Body to conclude that the standards of the applicable unified development ordinances (UDO) have been met. If the applicant meets all the standards of the UDO, the applicant is entitled to approval unless those opposed to the application produce substantial, competent and material evidence that one or more of the standards have not been met. If the applicant fails to put forth sufficient evidence to show they meet all the criteria, then the Hearing Body must deny the application. For example, for a special use, the applicant must establish that the application meets the specific criteria for the specific use proposed and that it meets all of the general criteria of the UDO. For site/subdivision plan, the applicant must establish that the application meets the applicable criteria of the UDO.
- (b) Burden of Proof for Variances: The applicant has the burden of producing sufficient substantial, competent, and material evidence for the Hearing Body to conclude that unnecessary hardships would result from carrying out the strict letter of the zoning ordinance. The BOA must deny a request for a variance unless the applicant puts forth sufficient evidence that all of the criteria of UDO have been met.
- (c) Burden of Proof for Appeals: Appeals of administrative decisions are only quasi-judicial decisions in the limited sense that they require the same due process protections as are given in other quasi-judicial proceedings (for example, the rights to present evidence and cross examine). Unlike other quasi-judicial decisions, however, an appeal of an administrative decision presents a question of law, which the Hearing Body considers de novo. "De novo" means the Hearing Body is not bound by the ordinance interpretation of Town staff. Instead, the Hearing Body must seek to interpret the ordinance so as to give effect to the Town Council's intent when it adopted the ordinance. The Hearing Body shall not reverse or modify an administrative decision unless it finds that the administrative officer erred in the application or interpretation of the terms of the UDO, Town Code, or related policies adopted by the Town. The other common rules of statutory construction apply as well. Appeals are typically in the nature of certiorari to the superior court as set forth in N.C.G.S. § 160D-1402.
- (d) Testimony and Evidence: All lay and expert testimony, including the Town staff, must be sworn testimony. All persons wishing to speak will be given a reasonable time in which to be heard; however, groups are encouraged to select a spokesperson to speak for the group in order to avoid repetitive testimony. Inflammatory, irrelevant, repetitive, and incompetent testimony and hearsay is not permitted. The Hearing Body's decision must be based on substantial, competent, and material evidence. Substantial evidence is

"that which a reasonable mind would regard as sufficiently supporting a specific result." Competent evidence is evidence that can be subjected to cross-examination, inspection, explanation, and rebuttal. Courts often refer to that is relevant to the issue being considered by the Hearing Body.

- i. Lay Versus Expert Testimony: As a general rule, anyone with relevant knowledge to the case may provide factual information, but only experts may provide opinion testimony. Lay witnesses should not provide opinion testimony, as this testimony is generally deemed incompetent. Expert testimony must be competent wherein the expert has qualifications relevant to the matter before the Hearing Body. Under N.C.G.S. § 160D-1402(j)(3), expert testimony is required in three cases:
 - a). The use of property in a particular way would affect the value of other property;
 - b). The increase in vehicular traffic resulting from a proposed development would pose a danger to the public safety; and,
 - c). Other matters about which only expert testimony would generally be admissible under the rules of evidence, such as the level of noise that will be generated.

(e) Conditions of Approval.

- i. Conditions Generally: The Hearing Body may attach conditions to approvals of special use permits, subdivision and site plans, and variances, and such other approvals as law may permit. For special use permits and subdivision and site plans, conditions must be reasonable and appropriate and limited to those that require changes in a project "that are necessary to bring the project into compliance with the standards" of the applicable statutes and ordinances. For variances, conditions must be "reasonably related to the variance."

Conditions cannot require the applicant to take action with regard to a piece of property that is not a part of the application being considered, and conditions cannot require the alteration of a special use permit previously issued to a third party.

- ii. Conditions on Appeals Decisions: Unlike conditions on special use permits, subdivision plans, site plans, and variances, the Hearing Body's authority in an appeal is limited to reversing or affirming, wholly or partly, or modifying the staff decision. Moreover, the Hearing Body only has only the powers of the officer from whom the appeal is taken. An appeal of an administrative decision cannot

be used to impose conditions or vary the ordinance.

- (f) Written Decision. The Hearing Body must reduce its decision to writing, and the written decision must reflect the Hearing Body's determination of contested facts and their application to the specific standards for the particular use and the general standards contained in UDO for special uses, for subdivision plans and site plans, for variances, and for reasonable accommodations. For approvals or denials of these types of applications, the Hearing Body should make conclusions as to each applicable standard as appropriate. Even if the Hearing Body denies an application because it fails to meet one or two criteria, the better practice is to make findings of fact and conclusions as to all standards, so the record is clear in the event the decision is appealed.

There are no specific UDO standards that apply to the appeal of an administrative decision; instead, the Hearing Body should make findings of fact and conclusions that are relevant to the specific ordinance that is at issue in the appeal. Findings of fact must also be made to support conditions attached to any approval. The written decision must be signed by the Presider or other authorized member of the Hearing Body and becomes effective upon filing with the Planning Department. A copy of the written decision must be delivered to the applicant, property owner, and others as required by state law.

- (g) Withdrawal of the Application. An application or appeal will be considered to have been withdrawn under the following circumstances.
 - i. The applicant submits a written request to withdraw the application or appeal;
 - ii. The property owner, if different than the applicant, submits a notarized request to withdraw the application or appeal;
 - iii. The Hearing Body requests the applicant to furnish additional information within a specified period of time, and such information is not furnished by the applicant within the time period allowed;
- (h) Without prior notification to the Presider or Clerk, the applicant does not appear at the scheduled hearing to testify regarding the merits of the application; or
- (i) The applicant appears at the scheduled hearing and requests that the application be withdrawn.
- (j) Reconsideration/Reopening. Substantive decisions on the merits of a request cannot be reconsidered and decided cases cannot be reopened following the approval of a written decision. If there has been a material change in circumstances, the case may be submitted as a new case under the unified development ordinance.