

EVIDENTIARY HEARINGS

Clayton citizens are welcomed and encouraged to attend town council meetings. Attending a council meeting allows you to be informed about the issues before the Clayton Town Council.

This issue of “Clayton Council Meeting – 101” will focus on evidentiary hearings.

Evidentiary hearings on applications for a Subdivision or Special Use Permit may be scheduled during a public meeting. An evidentiary hearing, also known as quasi-judicial hearing, occurs when an agenda item has been advertised and noticed according to the law; however, the Council acts like a court of law. During an evidentiary hearing, the Council receives only sworn testimony and other credible evidence. In addition, the Council must make findings of fact based upon the evidence presented. Citizens may give testimony in an evidentiary hearing only after they have taken an oath.

Because the Council functions in a different capacity during an evidentiary hearing, it uses a procedures form. So citizens can have a better understanding of the evidentiary hearing, below are the procedures:

- **Hearing.** The Mayor shall call the hearing and announce the case.
- **Rules of Procedure.** The Town Attorney introduces the evidentiary hearing procedures and states, “The Town Council normally functions in a legislative capacity; preliminary subdivision hearings and special use permit hearings are “quasi-judicial,” which means that the Council acts essentially as a court of law. There is a burden upon the applicant for the preliminary subdivision permit and/or special use permit must meet the four criteria found in the Town’s Unified Development Code. Anyone opposed to the application must put on evidence of a similar kind showing the criteria have not been met. Testimony must be given under oath. All testimony and evidence provided to the Council must be competent, material and substantial. Pursuant to the North Carolina General Statutes, competent evidence does not include opinion testimony of lay witnesses on certain matters. Hearsay evidence will not be admitted. The Town Council will apply the criteria contained in the Unified Development Code and make its decision based on the evidence and testimony presented at the hearing. The role of the Town Attorney during the hearing is to monitor all evidence and testimony to ensure that it complies with North Carolina law, the Town’s Code and procedures, and all other applicable requirements.”

- **Oaths.** Oaths shall be administered to all speakers. A statement of oath shall be signed by all persons taking the oath.
- **Staff Report.** The Staff shall give his or her report.
- **Applicant Testimony.** The applicant shall be called to present his/her case. If the applicant or a representative is not present to give testimony, the Mayor shall call for a vote of the members present to continue the hearing for 30 days. The applicant shall be notified of such action. The Mayor, with the advice of the Town Attorney, shall be responsible for keeping the testimony relevant and factual. No questions shall be asked by the Town Council at this time.
- **Opposition Testimony.** Those speaking in opposition to the application shall be called upon to present their case. The Mayor shall be responsible for keeping the testimony relevant and factual. No questions shall be asked by the Town Council at this time.
- **Applicant Rebuttal.** The applicant and/or those in support of the application shall be provided an opportunity to rebut testimony provided by the opposition. The Council may also ask questions of the applicant at this time.
- **Opposition Rebuttal.** Those in opposition to the application shall be provided an opportunity to rebut testimony provided by the applicant. The Council may also ask questions of the opposition at this time.
- **Council Inquiry.** The Council shall ask any additional questions of the applicant, opposition, or staff at this time. There shall be no time limit except that the Mayor shall be responsible for keeping questions and responses relevant and factual.
- **Deliberation.** The Mayor shall call the Council into deliberation. Once called into deliberation no person may address the Council and no questions may be asked by Council to the public.
- **Utility Allocation (When Applicable).** In the event of pending action on a utility allocation request related to the case and there being no additional testimony, the Council shall take action on the utility allocation in accordance with related policies and procedures.
- **Action - Findings for Decision.** Once discussion of the evidence has been completed and action taken on the utility allocation (when applicable); each finding shall be discussed in turn and a motion, second and vote shall

be made selecting one of the three alternatives for each finding. A majority vote shall prevail. All four findings shall be addressed:

Subdivision Review, Findings of Fact Required 155.706 (I) (10):

No preliminary plat may be approved by the Town Council unless all of the following findings are made:

1. Consistency with the adopted plans and of policies of the Town.
2. The subdivision meets all required specifications of this chapter.
3. The subdivision will not be detrimental to the use or orderly development of other properties in the surrounding area and will not violate the character of existing standards for development of properties in the surrounding area.
4. The subdivision design will provide for the distribution of traffic in a manner that will avoid or mitigate congestion within the immediate area, will provide for the unified and orderly use of or extension of public infrastructure, and will not materially endanger the environment, public health, safety, or the general welfare.

Special Use Review, Findings of Fact Required 155.711 (I):

No special use permit shall be approved unless the following findings are made concerning the application:

1. That the application will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved.
2. That the application meets all required specifications and conforms to the standards and practices of sound land use planning and the Town Code of Ordinances or other applicable regulations.
3. That the application will not substantially injure the value of adjoining or abutting property, and will not be detrimental to the use or development of adjacent properties or other neighborhood uses.
4. That the application will not adversely affect the adopted plans and policies of the Town, or violate the character of existing standards for development of the adjacent properties.

- **Action - Application.** Once all four findings have been decided and based on the results of the evaluation and vote on those findings, the Council shall make a motion and vote to approve or deny the application. Failure of any single criteria to achieve majority approval by the Council shall necessitate a decision against the application. A majority vote for approval for all of the four criteria shall necessitate a decision in favor of the application.

The findings of fact for the Subdivision Review and the Special Use Permit are found in the Town's Code of Ordinance. The Town Code of Ordinances are

available online at http://www.amlegal.com/clayton_nc, and citizens are encouraged to visit the site.

The Council agenda may be viewed online at <http://www.townofclaytonnc.org> the Friday before a scheduled meeting. If you do not have access to the Internet, please call 919.553.5002 and request a copy of the agenda.

If you have suggestions for the next “Clayton Council Meeting – 101” article, please contact the Town Clerk.

We look forward to seeing you at Town Council meetings.