

OCONEE COUNTY BOARD OF ZONING APPEALS

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MINUTES

BOARD OF ZONING APPEALS

6:00 PM, MONDAY, SEPTEMBER 23, 2019

COUNTY COUNCIL CHAMBERS

OCONEE COUNTY ADMINISTRATIVE COMPLEX

The Oconee County Board of Zoning Appeals held a meeting on SEPTEMBER 23, 2019 at 6:00 PM in Council Chambers at the Oconee County Administrative Building, 415 S. Pine St., Walhalla, SC 29691.

Members Present: Mr. Gilster
Mrs. Fowler
Mr. Codner
Mr. Morgan
Mr. Eagar

Staff Present: Bill Huggins, Planner
David Root, County Attorney

Media present: None

ITEM 1- Call to Order

Mr. Gilster, Chairman, called the meeting to order at 6:00 p.m.

ITEM 2- Approval of Minutes of April 25, 2019

An amendment was made to the minutes of the April 25 meeting. Mr. Gilster stated that on Page 4, at the end of item 5, the case is indicated as denied by a 2 to 4 vote. He felt it was customary to place the higher number first in the vote order. The amendment was approved 5-0. The minutes as amended were approved as modified.

ITEM 3- Public Comment (Non-Agenda)

No one from the public signed up to address the Board or make comments.

ITEM 4- Legal and Procedural Advice

Legal Advice from County Attorney

Mr. David Root was present to discuss several policy and procedure issues with the Board.

Site Visits

Mr. Root explained that based on the research staff had done, there is not a uniform practice in jurisdictions around the State concerning whether or not Board members should be encouraged to conduct individual site visits for cases coming before the body. He noted that this does often occur and that some communities do encourage the practice, as long as a quorum of the Board does not visit a site together. This would trigger a requirement to publish notice of the event, which would be considered a meeting under statutory requirements.

Mr. Codner stated that he would be concerned about even two members going on site together. Mr. Root responded that the only jurisdiction staff had encountered that formalized this process issue is Seabrook, which incorporates formal site visits into the Board meeting agenda. They begin meetings at their boardroom, take a recess and visit the site, adjourn, and return to the boardroom for the substantive hearing. This way the visits are noticed along with the Board meetings. Mr. Root pointed out the quasi-judicial nature of this proceeding, thus making due process issues critical to the process, in order to insure due process for the applicant and those who may oppose a request.

He added that the Board decision carries great weight, even when the outcome is challenged in court. You need to make sure the acquisition of evidence is done in a fair and impartial manner. Because of this, he felt that if members are going to visit a site, he prefers that they do it together to insure that all members begin deliberations on a case from the same point of knowledge, with the same information base.

Mr. Root went on to explain that the S. C. Association of Counties recommends that Board members take no site visits and speak to no one about a case prior to the hearing. Therefore, he continued, if the Board does take site visits as a body, the rules of procedure should be clearly defined, including a prohibition on field discussions about the case.

Mr. Eagar stated his concern with the Association approach. He felt it necessary to visit the site to acquire objective evidence. He recalled that in an Orientation training, they were told by presenters that it is advantageous to visit sites. Mr. Root responded that he does object to taking photos in the field, which is in effect producing evidence.

Mr. Codner stated that he understands the concern about photos, but he felt it was imperative that members visit the site.

In response to a question about grounds for appeals, Mr. Root explained that a lawyer might apply a due process argument if, for example, some members visit a site and some do not, creating an imbalance in knowledge that could influence an outcome. He added that an appearance of impropriety is also something to consider. He quoted the Association attorney's opinion to the effect that members should make their decisions based solely on evidence presented at the hearings and should not discuss the case beforehand. He added that Staff can take photos and provide evidence that they bring in. This is considered impartial evidence.

Mr. Eagar asked if this issue had emerged in case law, and Mr. Root responded that he did not find any such instances with that precise issue.

Mr. Codner stated that the Board's mission should be to do the right thing. He felt it was imperative to visit the property.

Mr. Root concluded by saying that he would have a problem with staff encouraging site visits. He said that if the Board insists on site visits he would recommend that either every member visit the site or that the Seabrook approach be utilized.

Mr. Gilster stated that he would like to place a larger responsibility on staff to provide more complete information, including photos, so that site visits are needed. He suggested that the staff and Board rules simply remain silent on the issue of site visits. Ms. Fowler stated that she has a concern about members providing evidence. She did not want to receive evidence or preformed opinions from Board members. Mr. Root added that if a Board member presents information that contradicts an applicant or opponent based on a field visit, this has the effect of casting that member as an advocate.

Mr. Huggins suggested that the staff provide a more complete photographic record as part of the agenda packet for cases as well as more detailed information about each site.

Mr. Eagar asked if it would be helpful to include language in the applications indicating that members are given permission to go on the site to assess the case. This application would be signed by the applicant. Mr. Root did not support any change to the application or process statements.

Mr. Root next called members' attention to the packet materials from the Association about ex parte communication.

Conflict of Interest

Mr. Root next discussed issues to consider if a member is concerned about whether or not they have a potential conflict of interest in a given case.

Mr. Gilster also asked Mr. Root about third party intervention and the appeal process to the Circuit Court.

Mr. Codner asked about the finding of facts and conclusions of law. Mr. Root explained that the Board should state its findings in making a decision.

Mr. Eagar asked Mr. Root if the Board should swear in witnesses. Mr. Root responded that it is a good idea to do so and that the Chairman would handle that. He noted that the Rules of Procedure state that parties in interest may present evidence under oath.

Mr. Eagar made a motion that the Board require that individuals submitting evidence at the hearing be sworn in. There was no second, and members informally agreed to continue with the current process and to address this issue as needed.

ITEM 5- Old Business

Mr. Huggins summarized development activity for the recent period for the Board.

ITEM 6- Adjourn

A motion was made and seconded to adjourn. The motion was approved unanimously. The Board adjourned at approximately 7:20 p.m.