

# Appellate Decision Making: The Legal Aspects

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# District Sanitary Code

*The governing process for boards of appeal*

- Provides for a Board of Appeals for each county
- Consists of five county residents and optional alternates
- County Commissioners may be appointed as well as citizens

**Today's training focuses on the legal aspects  
of local appellate decision-making.**

# Equip Yourself and Your Board

- ▶ Appellate decisions which are NOT consistent with the law can result in:
  - ▶ Unjust decisions
  - ▶ Unequal treatment of citizens
  - ▶ Wasted money on needless litigation
- ▶ A Board of Appeals member is essentially a "judge," not an elected official
  - ▶ Ethical and legal guidelines apply
  - ▶ Decisions are called "quasi-administrative" decisions

# Proper Procedures

When handling an appeal under the sanitary code, the following procedures and ethical considerations should be followed:

- ▶ Applications: Must be complete with all supporting documentation required by the code (Section 11-4).
  - ▶ The order, requirement, decision or determination that is being appealed
  - ▶ Sections of the code that apply to the appeal
  - ▶ Those facts on which the appellant relies to support the appeal

Unless compliant with section 11-4, the application is not "ripe" for decision.

# Proper Procedures (continued)

- ▶ Site Visits: May be made prior to the hearing and are subject to Open Meetings Act compliance
  - ▶ There should be no discussion with the property owner or anyone else regarding the merits or substance of the appeal.
  - ▶ During the hearing, board members may vote to adjourn the meeting so that it can be reconvened at the site. When this is done, the Open Meetings Act must be followed.

# Proper Procedures (continued)

- ▶ Meetings & Discussions: Must comply with the Open Meetings Act.
  - ▶ The Act also applies to deliberations or situations where substantive matters related to the appeal (such as the facts) are discussed.
  - ▶ It makes no difference whether this discussion is between:
    - ▶ Board members
    - ▶ The applicant
    - ▶ With other persons
  - ▶ There should never be a discussion on the merits of an appeal with anyone unless that discussion takes place during a properly noticed open meeting.

# Proper Procedures (continued)

- ▶ Variations: Can be granted by Health Officer or BOA [sec. 10-1(A)&(B)]
  - ▶ BOA has broad authority.
  - ▶ Health Officer is limited to existing situations.
  - ▶ Variance Standards (as defined in section 10-2) must be met and are similar to “undue hardship” in the zoning ordinance.
  
- ▶ Question: What if property owner appeals a decision and fails to request a variance that would resolve the problem?
  - ▶ It could violate due-process to grant a variance when not requested in the application for an appeal.
  - ▶ When in doubt, get LEGAL ADVICE prior to the meeting.

# Proper Procedures (continued)

- ▶ Burden of Proof for Appeals: The applicant or appellant has the burden of proof.
  - ▶ Evidence must establish that EACH “Standard For Decision” (see section 11-6) has been met.
- ▶ When there is conflicting evidence, the law allows the BOA to decide which evidence is the most credible.

# Proper Procedures (continued)

- ▶ Decisions: Must be made in an open meeting and in writing. The written decision must:
  - ▶ Be supported by facts on the record
  - ▶ State why the standards in the sanitary code have been met or have not been met
  - ▶ State the decision, whether the appeal was granted or denied, and any variances granted
- ▶ Meetings may be adjourned while a BOA member drafts a proposed motion – without input from other board members.
- ▶ Civil counsel for the BOA may be present when reconvening to help draft the motion.

# Proper Procedures (continued)

- ▶ In complex cases, the BOA may discuss applying the facts to each standard and then adjourn so:
  - ▶ Either HDNW staff or civil counsel can prepare a proposed draft of the written decision which can be reviewed, altered, finalized, and adopted by the BOA at its next meeting.

**Provide time to thoroughly discuss and evaluate,  
especially complex decisions.**

# Authority and Responsibility

- ▶ Be Thorough: It is unfair to board members, the applicant, interested citizens, HDNW and taxpayers for a decision to be overturned in Court due to procedural irregularities.
- ▶ Using proper procedures:
  - ▶ Sets good precedent
  - ▶ Provides for fair hearings
  - ▶ Eliminates one basis for Court proceedings
  - ▶ Reduces or eliminates risk of civil liability
  - ▶ Saves on legal expenses
  - ▶ Provides equal treatment under the law

# Authority and Responsibility

- ▶ Civil Liability: Could impact HDNW and BOA members
- ▶ Plaintiffs could assert:
  - ▶ Intentional failure of the BOA to follow established legal requirements in deciding an appeal could be considered “willful and wanton misconduct” or “gross negligence.”
  - ▶ When gross negligence occurs, Michigan’s Governmental Immunity Statute does not provide liability protection to employees, members or volunteers of a governmental agency.

# Recommendations

## ▶ Improving Hearings:

- ▶ Implement or refine the hearing format. The Chair should control the meeting.
- ▶ Read all submitted materials before the hearing. Have a list of questions, if needed.
- ▶ Respect personal opinions, but they should be supported by scientific or evidence-based information.
- ▶ Be pre-emptive and invite legal counsel to attend complex hearings.
- ▶ Avoid applying personal perspectives. Stick to Code provisions.
- ▶ Avoid violations of the Open Meetings Act. Review Robert's Rules of Order.
- ▶ Avoid conflicts of interest.

# Thank You For Attending!

For more information on the Code or the process, please contact 231-547-6523:

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