

## **A Citizen’s Guide to Evidentiary Hearings** *(also known as Quasi-Judicial Hearings)* **City of Winston-Salem**

In most of its work, the Winston-Salem City Council acts in a “legislative” capacity. When they take up legislative issues, City Council members solicit and consider concerns of many different constituents. They can seek information from anyone they choose, use their own experiences, opinions and judgments, and listen to the different viewpoints involved in an issue at any time or place they choose. In legislative matters, the City Council will often hold a public hearing about a legislative issue to solicit comments from the public, where citizens may address decision-makers. Most public hearings have only informal rules regarding how the hearing is held and how long and on what issues members of the public may speak. For example, at a regularly scheduled public hearing any citizen may speak for however long the council sets as a time limit and give his or her opinion on the issue.

As part of its legislative role, the Winston-Salem City Council and its appointed boards and commissions hold many public hearings each year, mostly informal. Less frequently, the City Council acts like a court in what is called a “quasi-judicial” capacity. Under North Carolina statutes, whenever a board applies pre-determined discretionary standards in an ordinance to a particular proposal, usually in matters involving land use, it must conduct a quasi-judicial or evidentiary hearing. The City Council conducts such evidentiary hearings when considering special use permits, as set forth in Section 6-1.5 of the Unified Development Ordinances. Evidentiary hearings are designed to ensure that discretionary standards are applied fairly to every applicant.

### **It is important to know that in an evidentiary hearing:**

- Proponents **present substantial, competent evidence** that a proposal meets a series of **specifically-defined standards** related to the proposal under consideration. The standards are written or referenced in the Unified Development Ordinances. Opponents must also present substantial, competent and material evidence that the proposal does not meet the applicable standards.
- Information concerning the application **can** only be presented at scheduled hearings. Neither the applicant nor other interested persons may discuss the matter with the members of the City Council or City board outside the hearing, though a verified motion may be filed in advance of the hearing.
- **Witnesses are sworn or affirmed** as in a court of law. Only qualified experts in a particular discipline may testify as to their opinions; laypeople cannot. The controlling North Carolina statute (G.S. § 160A-393) specifically states that a lay witness **cannot** testify that:
  - 1) the use of the property would affect the value of other property, or
  - 2) increased vehicle traffic would pose a danger to public safety.
- The presiding body makes a determination whether the plan is in accordance with the standards of the Unified Development Ordinances and **issues specific findings**.
- Because the **ONLY** purpose of this hearing is to introduce evidence as to whether or not a proposal meets specific standards, **no other information can be presented**. No opinions (unless

an expert witness is called to offer or dispute a fact), and no information on any related issue can be considered by the reviewing body.

- **Those testifying must follow rules of evidence set out in State statutes.** Just as happens in Court, if an opposing party objects to inadmissible evidence, the objection will be sustained and the inadmissible evidence will not be allowed in the record.
- **All witnesses who testify may be cross-examined** as in a court of law.
- The **only appeal to a quasi-judicial decision** made in an evidentiary hearing is to **Superior Court**. (For the Historic Resources Commission, appeals go first to the Board of Adjustment, then to Superior Court.)

**Here are a few questions and answers about evidentiary hearings:**

***How do I know if a project proposed near me requires an evidentiary hearing be held prior to approval?***

Notices are sent out by first-class mail to nearby property owners, and a sign is posted on the subject property. Additional information is provided on the City of Winston-Salem's website, [www.cityofws.org](http://www.cityofws.org), and a notice is published in the local newspaper prior to the hearing.

***How do I get more information about the proposal?***

If you receive a letter, it will include information about where to seek more specific detailed information on the proposal and on the specific standards that will need to be met. The letter will also contain contact information such as a phone number, email address, and a website address. Each sign posted on the property will include a case number for the citizen to refer to when making an inquiry.

***If I believe that standards are not fully met for this plan and want to testify, what do I do?***

Both proponents and opponents of a special use permit may submit a verified petition to the City Secretary's Office, at least 7 days prior to the hearing, setting forth the basis for support or opposition. The person submitting the motion must be present and available to answer questions at the public hearing. If the person filing the motion does not appear at the scheduled hearing, City Council may refrain from considering the motion, and in no case will City Council base its findings solely on a verified motion.

You may also simply come to the hearing. The Mayor will ask those who wish to testify to come forward and be sworn in. You may be cross-examined. You may also cross examine the applicant's witnesses. The controlling State statute discusses who may participate in a hearing (see G.S. § 160A-393(d)). Certain associations may be allowed to participate in a hearing, as well as individual property owners or lessees.

***Should I or my neighbors hire an attorney or an expert to testify?***

That is an option, but City staff cannot offer advice on this question. When the issues are technical, such as whether or not a proposal will create a traffic problem, an expert witness may be the only qualified person who can provide factual information that is admissible.

***What if I want to talk to City Council members or board members who will be hearing the case, so they know how we feel?***

Under the rules for an evidentiary hearing, no communication with the presiding body is allowed outside the hearing. Just like judges in Court, Board members and City Council Members who make quasi-judicial decisions cannot discuss cases except during a hearing and then must decide applications based on evidence.

***Why doesn't the City Council simply use the legislative hearing process, rather than the more difficult and technical evidentiary hearing process for these cases?***

North Carolina statutes give the City of Winston-Salem no other choice. All of the evidentiary hearings held by the City are conducted in this formal manner due to State law mandates.