

PA / Community Development Update

January 13, 2021

4:04 p.m.

Present: Commissioner Pollock, Commissioner Swope, County Manager Erik Martin, Eric Eisenberg, Brianna Uy, Lee Napier, Tammy Martin, Lara McRea

Guest: Frank Corbin

Recorder: Rieva Lester

Eric Eisenberg discussed the difference between legislative decisions and quasi-judicial decisions as such:

- Legislative decisions affect the land use rights and obligations of whole areas or the whole county, such as most comprehensive plan changes, new development regulations, new countywide planning policies, etc.
- Quasi-judicial decisions affect the rights of specific parties coming before the commission.

He outlined different types of quasi-judicial decisions that come before the commissioners:

- Project-specific actions include modifications to development regulations, the comprehensive plan, or the zoning map that affect an individual or smaller group of parcels. Project-specific amendments are typically sought by an individual property owner or group of owners for their own benefit. The applications require public notice on the site and for neighbors and a quasi-judicial public hearing before the planning commission.
- Non-project legislative actions include modifications to development regulations, the comprehensive plan, or zoning map that affect larger groups of parcels. The process for the amendments is articulated in Chapter [17.12](#) LCC, though noticing requirements are included within this section. Non-project legislative actions are typically sought by the county to promote a public rather than an individual benefit.

One type of quasi-judicial decision the BOCC can see with some regularity is a site-specific rezone. Table 17.05-2, just below LCC 17.05.040 hyperlinked above, lists site-specific rezones as a Type V application; they count as a quasi-judicial decision because they affect a small number of parcels.

Eric noted that legislative decision-making does not have to be free from bias. Politics is biased; a politician can vote for a particular bill to please his constituents after they meet with him or her privately about whatever they want (short of bribery or campaign finance rules).

However, he said, quasi-judicial decision-making must adhere to the Appearance of Fairness Doctrine, an aspect of due process of law. To afford due process, a procedure affecting one's specific rights must not only be fair, it must also appear fair.

Eric said site-specific rezones come to the BOCC as quasi-judicial decisions. He provided the following recommendations for those:

- Unlike normal, you should not talk to your constituents about site-specific rezones.
- Be transparent: consider only what is presented in the record. No “ex parte” contacts. Disclose any connection you have to a case, including when people contact you beforehand. See the reverse.
- Be fair: In all statements, show that you are fair to all sides and have an open mind. If you can’t be fair, recuse.
- Inspire confidence: Don’t just be fair, show you are fair. Be calm, polite and evenhanded, but firm about the rules.

Eric provided strategies for redirecting constituents into the right forum:

- “I am sorry, I am not allowed to talk about that issue privately. Can I connect you to someone you are allowed to talk with?” [E.g., Community Development]
- “Your opinion is important; I want to make sure it is heard. Can you write me a letter that I can put in the record so everyone can consider it?”
- “I can only consider what is part of the public process on that issue. Can I get you some information about that so you can participate?”
- Whatever the contact, make a record of what was given or told to you and email it to Community Development to be put in the record. In your email, mention that you didn’t ask for the information, that you have not yet considered it, and that you will keep an open mind throughout the process.

Eric reviewed quasi-judicial hearings that will come before the commissioners in the near future:

- **Jorgensen Timber Rezone:** Seeks to change RDD 20 land south of Pleasant Valley Rd near Evaline to MRL for rock quarry use.
- **Padula Rezone:** Seeks to change RDD 20 land east of Vader and I-5 to ARL to allow transitory accommodations for agritourism.

Meeting adjourned at 4:33 p.m.