AGENDA
TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION MEETING
July 18, 2024. AT 6:00 PM
171A STATE ROAD 344
EDGEWOOD TOWN HALL – CONFERENCE ROOM

THE TOWN OF EDGEWOOD PLANNING & ZONING COMMISSION IS PLEASED TO HAVE RESIDENTS OF THE COMMUNITY TAKE TIME TO ATTEND COMMISSION MEETINGS. ATTENDANCE AND PARTICIPATION IS ENCOURAGED. INDIVIDUALS WISHING TO BE HEARD DURING PUBLIC HEARING PROCEEDINGS ARE ENCOURAGED TO BE PREPARED PUBLIC COMMENTS ARE EXPECTED TO BE CONSTRUCTIVE AND DEVOID OF CHARACTER ASSASSINATION. WRITTEN COMMENTS ARE WELCOME AND SHOULD BE GIVEN TO THE TOWN ADMINISTRATOR PRIOR TO THE START OF THE MEETING.

1. **CALL TO ORDER & ROLL CALL**

2. **APPROVAL OF AGENDA**

3. **APPROVAL OF MINUTES**
   DRAFT PLANNING & ZONING COMMISSION MEETING MINUTES FOR 6/20/2024

4. **ACKNOWLEDGEMENT OF PUBLIC NOTICE**

5. **APPLICATION FOR LOT LINE VACATION**

   Application is to a request acknowledgement of a **LOT LINE VACATION.** The Applicant is **Rey Fulwiler** as agent for **Patricia Fincher** as owner. Request to acknowledge vacation of lot line will be subject to conditions identified in Ord. 2019-04 (Section 12), and any further conditions determined by the Planning and Zoning Commission. **Location of subject property is: 22 Duke Road,** T10N R 7E S33 1.190 AC S2-SE4-NW4-NE4, also identified as Parcel # 96000987. Property is fully located within Edgewood, Santa Fe County, New Mexico. The property is zoned MP Master Plan.

6. **MATTERS FROM THE CHAIR AND COMMISSION MEMBERS**

7. **MATTERS FROM STAFF**

   Training on "Competent Evidence – Expert Witnesses"

   Update on Department restructuring

   NMML Annual Conference In Clovis Aug. 13 – 16, 2024

8. **CALENDAR UPDATE & FUTURE AGENDA ITEMS**

   a. **Next regular P&Z Meeting or Training – August 22, 2024**

9. **ADJOURN**

A COPY OF THE AGENDA MAY BE OBTAINED AT THE TOWN OFFICE, 171A STATE ROAD 344 DURING REGULAR BUSINESS HOURS OF 8:00 AM - 5:00 PM. IF YOU ARE AN INDIVIDUAL WITH A DISABILITY WHO IS IN NEED OF A READER, AMPLIFIER, QUALIFIED SIGN LANGUAGE INTERPRETER, OR ANY OTHER FORM OF AUXILIARY AID OR SERVICE TO ATTEND OR PARTICIPATE IN THE HEARING OR

MEETING, PLEASE CONTACT THE TOWN CLERK AT 505-286-4518 AT LEAST ONE WEEK PRIOR TO THE MEETING OR AS SOON AS POSSIBLE.

TOWN OF EDGEWOOD
PLANNING & ZONING COMMISSION MINUTES
JUNE 20, 2024, MINUTES
171 A STATE ROAD 344
EDGEWOOD TOWN HALL-COMMISSION CHAMBERS

1. CALL TO ORDER & ROLL CALL

Commissioner Williams called the meeting to order at 5:38 pm. Commissioner Rush, Commissioner Bonino arrived at 5:55 pm, Commissioner Chavez, Commissioner Williams, Commissioner Hutchinson phoned at 6:05pm.

2. OATH OF OFFICE

MOTION: Tabled for next meeting.

3. APPROVAL OF AGENDA

MOTION: Commissioner Rush made a motion to approve the agenda and Commissioner Chavez seconded. No conflict from all commissioners.

VOTE: ALL VOTED AYE.

4. APPROVAL OF MINUTES

MOTION: Commissioner Williams made a motion to approve Commissioner Chavez Second the meeting minutes for the May 16, 2024, Planning and Zoning Meeting. Commissioner Rush was excused.

VOTE: FOUR VOTED AYE.

5. TRAINING ON JUDICIAL PROCEDURE- Nan Winters

6. MATTERS FROM THE CHAIIR AND COMMISSIONERS MEMEBERS

7. MATTERS FROM STAFF

A. Comprehensive Plan Update- Land Use Public Meeting July 27 from 10:30 am till 12:00 pm

8. CALENDAR UPDATE & FURTURE AGENDA ITEMS

A. Next Regular Meeting or Training – July 18, 2024, at 6:00 pm

B. Commissioner Chavez and Commissioner Reeves will not be attending.

9. ADJOURN:

MOTION: Commissioner Rush moved motion to adjourn the meeting @ 6:54 pm. Commissioner Bonino seconded the motion.

_____

Chairman

_____

Attest

Town of Edgewood
Community Planning & Development
P.O. Box 3610
Edgewood, NM 87015
(505) 286-4518 Fax: 286-4519

SUBDIVISION AND PLATTING APPLICATION

For Municipal Use Only: File No._____
Date of Receipt: _____
Planning Commission Meeting Date: _____

The undersigned hereby applies for approval under the Town of Edgewood Subdivision Ordinance, for the Plan, submitted herewith and described below:

Application Classification:

_____	Preliminary Plat	$ 50.00 per resulting lot
_____	Final Plat	$ 250.00 + 10.00 per resulting lot
_____	Vacation of Plat	$ 50.00
✓	Lot line vacation/replat	$ 50.00
_____	Right-of-way vacation,	$ 100.00

Applicant: Ray Fulwiler Telephone: 505-249-6664
Address: 22 Duke Rd Edgewood NM 87015
Street Address City State Zip Code
Agent: Ray Fulwiler
Telephone: 505-249-6664
Address: 29 Benjamin Trl, Edgewood NM 87015
Street Address City State Zip Code
Legal Description: 96000951
Existing Subdivision _____
Project Address _____
Number of Lots Created _____ Total Acreage:_____ Current Zoning: _____

IMPORTANT – PLEASE READ AND REVIEW

- ☐ Check if there are any easements on the property and show them on all preliminary and final plats.
- ☐ Check if there are any drainage or stormwater facilities on the property and show them on all preliminary and final plats.
- ☐ Check if there are any encroachments on current or proposed easements and show them on all preliminary and final plats.
- ☐ Check if there are any public or private utilities on the property and show them on all preliminary and final plats.

APPLICATION, TEN COPIES OF PLAT AND PROOF OF OWNERSHIP ARE TO BE SUBMITTED BEFORE A HEARING WILL BE SCHEDULED WITH THE PLANNING & ZONING COMMISSION

In applying for and signing this application, the property owner hereby grants permission for Municipal staff to access the property before and after the Planning Commission's review for the purposes of inspecting the proposed and/or approved parcels.

Applicant's Signature: Ray Fulwiler
Date: 6/27/24

Owner's Signature: Patricia Fencke **Date:** 6/27/24
(If different from applicant)

Fee Paid: _____ **Date:** _____

Receipt: _____ **Initials:** _____

LOT CONSOLIDATION PLAT OF
TRACT A, SUBDIVISION OF LANDS OF DAVID L. AND PATRICIA H. FINCHER
AND
A 1.1937 ACRE TRACT IN THE S½SE¼NW¼NE¼, SECTION 33
IN THE NE¼ SECTION 33 T.10N., R.7E., N.M.P.M.
EDGEWOOD, SANTA FE COUNTY, NEW MEXICO

SCALE: 1"= 50' JUNE, 2023

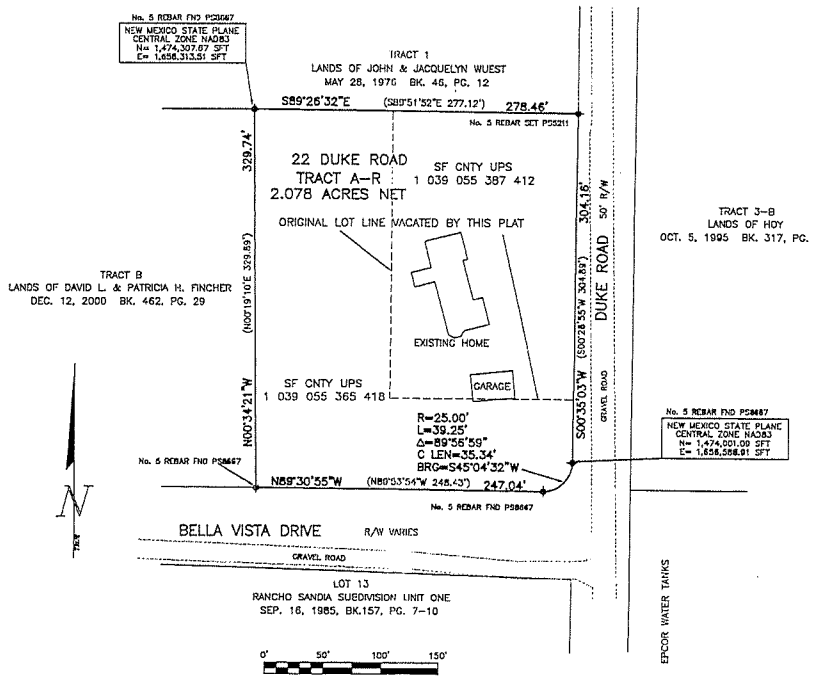
LOCATION MAP
NO SCALE

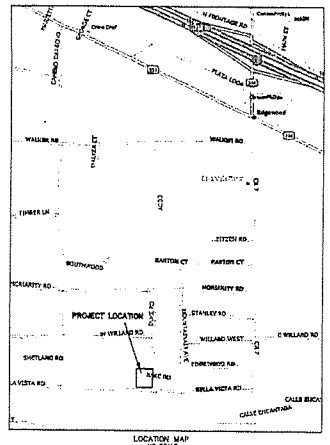
DESCRIPTION

TRACT A, LANDS OF DAVID L. AND PATRICIA H. FINCHER
AS FILED FOR RECORD DECEMBER 12, 2000 IN BOOK 462, PAGE 29 OF THE SANTA FE COUNTY RECORDS AS INSTRUMENT 1,138,918 AND A 1.1937 ACRE PARCEL RECORDED JULY 24, 1972 IN DEED BOOK 202, PAGE 787.

SURVEY GENERAL NOTES

1. THE PURPOSE OF THIS PLAT IS TO COMBINE TWO SEPARATE TRACTS INTO ONE TRACT. EASEMENTS ARE UNCHANGE BY THIS PLAT.
2. BASIS OF BEARINGS: THIS SURVEY WAS PERFORMED USING GPS AND CREATING A TRANSVERSE MERCATOR PROJECTION WITH THE GRID SET AT 6840 FEET TO ACHIEVE A SCALE FACTOR OF 1.0000 AT THAT ELEVATION. THE ORIGIN IS AT LATITUDE N35°03'04.78454" AND LONGITUDE W106°11'48.73989" WITH TRUE NORTH AT THAT POINT BASED ON THE GPS CONSTELLATION.
3. ALL DISTANCES ARE GROUND AND IN US SURVEY FEET. DATA IN PARENTHESIS REPRESENT PREVIOUS RECORD DATA.
4. THE BULK OF THE LANDS SHOWN ON HEREON LIE OUTSIDE THE 100 YEAR FLOODPLAIN IN ZONE "X" WITH THE EXCEPTION OF A PORTION AT THE NE SIDE LIES WITHIN FLOOD ZONE "A" AS SHOWN ON THIS PLAT AND AS SHOWN ON FEDERAL INSURANCE RATE MAP PANEL NO. 35049C0973D, DATED JUNE 17, 2008.
5. ZONING OF THE LANDS SHOWN HEREON IS R-1.
6. REFERANCE DOCUMENTS USED:
   A. WTY DEED TO FINCHER MAR24-46, BOOK 546, PG. 178
   B. SPEC. WTY DEED TO FINCHER JUL24, 1972 BK.202, PG. 787
   C. PLAT OF LANDS OF DAVID L. & PATRICIA H. FINCHER DEC. 12, 2000 BK. 462, PG. 29.
7. LANDS SHOWN HEREON LIE WITHIN FLOOD ZONE "X" AS SHOWN ON FEDERAL INSURANCE RATE MAP PANEL NO. 35049C1000E, DATED DECEMBER 4, 2012.





LOCATION MAP
NO SCALE

TOWN OF EDGEWOOD NOTES

1. MAINTENANCE OF ACCESS ROADS AND UTILITY EASEMENTS ARE THE RESPONSIBILITY OF THE LAND OWNER/USER UNLESS CURRENTLY MAINTAINED BY THE TOWN OF EDGEWOOD.
2. TOWN OF EDGEWOOD APPROVAL OF THIS PLAT DOES NOT INCLUDE THE CONSTRUCTION OF ANY PRIVATE EASMENT(S) OR ROAD(S).
3. PUBLIC UTILITY EASEMENTS SHOWN ON THIS PLAT ARE NOT EXCLUSIVE AND ARE DEDICATED FOR COMMON AND JOINT USE OF OR AS REQUIRED BY THE UTILITIES DESIGNATED ON THIS PLAT, THEIR SUCCESSORS AND ASSIGNS, AND FOR THE USE OF ANY OTHER PUBLIC UTILITY WHOSE USE OF SAID EASEMENTS IS DEEMED TO BE IN THE PUBLIC INTEREST BY THE TOWN OF EDGEWOOD AND/OR THE CURRENT LAND OWNERS.

TOWN OF EDGEWOOD APPROVALS

MANAGER DATE

PAZ COMMISSION DATE

ATTEST

TOWN CLERK DATE

SANTA FE COUNTY APPROVALS

RURAL ADDRESSING DATE

SANTA FE COUNTY TREASURER APPROVAL

WE, THE UNDERSIGNED, CERTIFY THAT A SEARCH OF THE TAX RECORDS FOR TRACT OF LAND SHOWN HEREON AND HAVE DETERMINED THAT ALL TAXES DUE AND PAYABLE FOR THE PREVIOUS TEN (10) YEARS HAVE BEEN PAID.

SANTA FE COUNTY TREASURER DATE

PUBLIC UTILITY EASEMENTS & APPROVALS

UTILITIES AND UTILITY EASEMENTS ARE NOT ADDED, VACATED OR MODIFIED BY THIS PLATTING.

FREE CONSENT

THE UNDERSIGNED OWNERS DO HEREBY CERTIFY THE PLAT AS SHOWN IS WITH THEIR FREE CONSENT AND IN ACCORDANCE WITH THEIR WISHES AND DESIRES.

Patricia H. Fincher
PATRICIA H. FINCHER

ACKNOWLEDGEMENT

STATE OF NEW MEXICO)
) SS
COUNTY OF SANTA FE)

ON THIS 25 DAY OF June, 2024, THE FORGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME BY PATRICIA H. FINCHER.

Catherine Cunningham
NOTARY PUBLIC

State of New Mexico
Notary Public
CATHERINE CUNNINGHAM
Comission # 1103103
Expires: October 25, 2025

SURVEYOR'S CERTIFICATE

I, JAMES A. BOTSFORD, NEW MEXICO PROFESSIONAL SURVEYOR NO. 5211, DO HEREBY CERTIFY THAT THIS SURVEY PLAT AND THE ACTUAL ON THE GROUND SURVEY UPON WHICH IT IS BASED WERE PERFORMED BY ME; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Jul 29, 2024
JAMES A. BOTSFORD, NMPS NO. 5211 DATE

JAMES A. BOTSFORD NEW MEXICO 5211 PROFESSIONAL SURVEYOR

FILED IN THE SANTA FE COUNTY CLERK'S OFFICE THIS _____ DAY OF _____, 2024, IN BOOK ____, PAGE _____, CABINET ____, NUMBER _____, BY _____, DEPUTY, AND _____, COUNTY CLERK.

BOTSFORD SURVEYING SERVICES, LLC
3 VAYA EN PAZ ROAD
SANDIA PARK, NEW MEXICO 87047

RECORDING INFORMATION FOR COUNTY CLERK

OWNERS: PATRICIA H. FINCHER

ADDRESS: PO BOX 418
EDGEWOOD
NEW MEXICO 87015

PROPERTY I.D. 1 039 055 387 412 000 00
PROPERTY I.D. 1 039 055 365 418 000 00

SECTION 33, T.10N., R7.E., N.M.P.M.

Santa Fe County Tax Parcel Viewer

Search Parcels

Search for an address or locate on map

Parcel Number, Owner, Address, U

Tax Parcels

96000987 - REAL - 22 DUKE RD

Parcel Number: 96000987

UPC: 1039055387412000000

See Sketch and Property Description Information

Physical Address:
22 DUKE RD
EDGEWOOD, NM 87015

Owner Name:
FINCHER, DAVID L & PATRICIA H

Owner Mailing Address:
PO BOX 416
EDGEWOOD, NM 87015

Tax Code Area: 8TIR

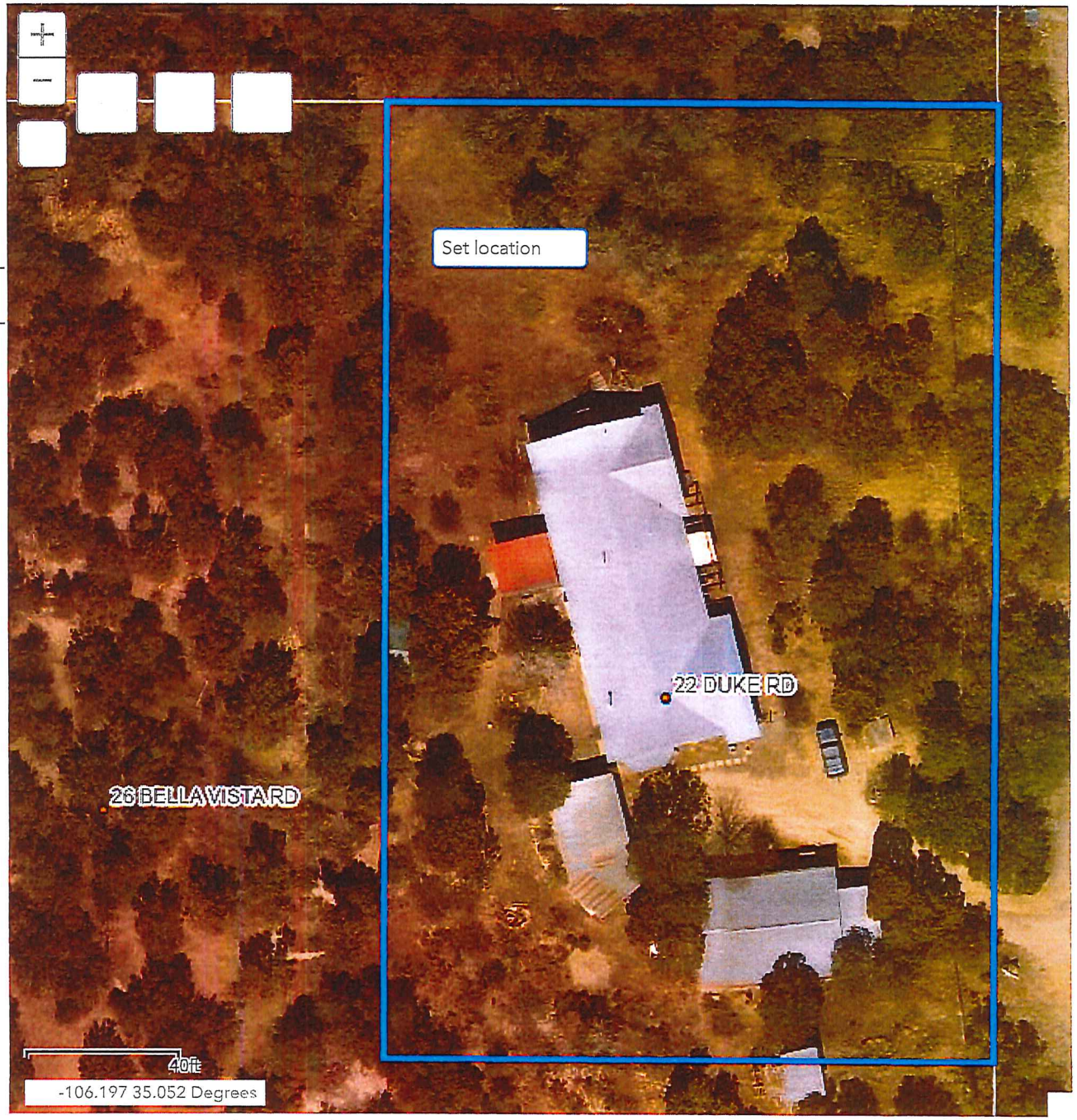
Legal Description:
T10N R 7E S33 1.190 AC S2-SE4- NW4-NE4
Acres: 1.1900

Plat Book/Page: 212/020
Current Deed: 292/787
Previous Deed:

Neighborhood: Edgewood City

Property Class: SRES

Assessed Structures Value: $144,260.00



Quasi-Judicial Zoning Decisions and Property Values: Whose Opinion Counts?

Published: 10/11/12

Author Name: Richard Ducker

How many times have you been to a public hearing and heard opponents to a particular zoning proposal say that it will cause the values of their property to decline? The impact on property values is a theme that runs through most zoning decisions. Developers want to create value in their own real property and are wary of property use restrictions that have the opposite result. Owners of neighboring property sometimes benefit from nearby development because a rising tide of property values elsewhere may lift the boats of neighbors as well. Often, however, there is a tendency for neighbors to think that development projects on other people's land will have negative, perhaps unintended, consequences for the use and value of one's own land. But does the opinion of a lay person on such matters count in a quasi-judicial forum? This blog concerns the ability of property owners to offer legally competent opinions about the impact of such zoning decisions on their own property.

Quasi-Judicial, Judicial, and Legislative Hearings

As you might expect, the evidentiary rules concerning these three types of hearings differ. First, there are legislative decisions such as rezoning decisions. These hearings are not evidentiary hearings. Decision-makers are free to take opinions and assertions as well as facts into account. Participants in rezoning hearings are free to offer their personal, non-expert opinions, and the local governing board is under no obligation to adopt findings of fact and conclusions of law to justify their decision.

In contrast, the rules of evidence that apply to state administrative agencies and local zoning boards acting in a quasi-judicial capacity are similar to but generally not always as strict as those that apply in a courtroom. One of the key comparisons concerns the treatment of testimony offered by lay and expert witnesses. To the dismay of some zoning boards of adjustment, governing boards, and planning boards, the relatively strict rules of evidence that apply in court concerning property-value evidence and expert testimony also apply to quasi-judicial zoning decisions.

Competent Evidence

Local boards making quasi-judicial zoning decisions must base their decisions on material, substantial, and competent evidence. Competent evidence is simply evidence that is admissible before the local board or court that is making a zoning decision. Opinion evidence is generally inadmissible when the witness is unqualified to express an opinion because he lacks the necessary experience or factual knowledge to form the proper basis for it. In certain instances lay opinion about property values can qualify as competent evidence, but in many more cases it will not.

Effect of Zoning Restriction upon Value of One's Own Property

Obviously zoning regulations and decisions may affect one's own property. In North Carolina an owner of real property is generally competent to testify as to the value of her own property even though her knowledge on the subject would not qualify her as a witness were she not the owner. For example, in Responsible Citizens v. City of Asheville, 308 N.C. 255, 302 S.E.3d 204 (1983), the North Carolina Supreme Court held that it was an error for the trial court to exclude the testimony of three property owners concerning the damaging effect of a flood hazard ordnance on the value of their respective properties. This rule applies unless it appears that the owner clearly does not know the market value of her own property. An owner is generally expected to know what price the owner paid for the property and the uses to which the property may be put and to have a reasonably good idea of what it is worth. It is understood, of course, that the owner's opinion of the value of her own

property may be subject to bias depending on whether it is in her interest to claim an appreciated value or depreciated value.

Testifying about the effect of a zoning decision on the value of one's own property is authorized when an owner is challenging the validity of zoning that applies to her own land in court. Moreover, statements by the owner can be competent evidence in a quasi-judicial proceeding such as, for example, one in which the owner has applied for a zoning variance.

However, the ability of a property owner to provide competent evidence about how a development proposal affects the value of other property is far different.

The Effect of a Zoning Decision with Respect to Property A on the Value of Property B

Suppose that the local development ordinance requires that the sponsor of a particular type of development project obtain a special-use permit in order to proceed. One of the ordinance standards requires that in order to qualify for the permit, the applicant must demonstrate that the project as proposed "will not substantially diminish the value of adjoining property." A neighbor, who owns property that adjoins the subject site, wishes to offer his opinion that the project would, in fact, diminish the value of his property by a certain amount. Would the neighbor's testimony qualify as competent evidence? No, not unless the neighbor qualified as an expert for purposes of ascertaining the effect of the project (and the existing zoning) on the neighbor's land. G.S. 160A-393 (k)(3)a. [now **G.S. 160D-1402(j)(3)**] provides that "competent evidence" is deemed to exclude "the opinion testimony of lay witnesses" as to how the "use of property in a particular way would affect the value of other property." The statute, adopted in 2009, appears to be consistent with prior law.

If lay testimony is not competent evidence, then what sort of expertise is required to qualify as an expert when it comes to estimating future changes in property values? An expert witness must first establish that he is in fact an expert. Then the expert must establish an adequate basis upon which his opinions are provided. Generally an expert witness is one qualified by knowledge, skill, experience, training, or education to provide specialized knowledge to help with the understanding of

evidence or the determination of facts. In a court of law whether someone qualifies as an expert is largely a question of fact to be determined by the trial court judge. Whether someone qualifies as an expert in a proceeding before a local quasi-judicial board may be determined by the board acting through its chair. An expert witness does not need to be a specialist, to be engaged in a particular profession, or to be licensed by a North Carolina licensing board. Appraisers, realtors, real estate brokers, and general contractors have all offered expert testimony concerning the impact on other properties of proposed development projects in cases that have reached our appellate courts. But experts from certain professions do not enjoy categorically favored status. In the North Carolina Court of Appeals case of Mann Media, Inc. v. Randolph County Planning Board, the court accepted the testimony of a real estate appraiser as substantial and competent, but rejected the testimony of a realtor and a building contractor who testified for opponents. The appeals court ruled the appraiser's testimony competent "because petitioners' appraiser is a professional appraiser whose skill was acknowledged even by the opponent realtor described above." The North Carolina Supreme Court rejected this reasoning, ruling that the appraiser failed to conduct the analysis necessary to support his opinions; therefore his evidence was not competent.

Substantial Evidence Based on Adequate Analysis

In a remarkable number of North Carolina appellate court cases involving local quasi-judicial zoning decisions the issue has not been whether a particular individual was qualified to provide an expert opinion. Instead the issue has concerned whether the expert witness had conducted adequate studies and analysis to establish the basis for his opinion and whether they proved or disproved the ordinance standard concerning property values. In Mann Media none of the experts addressed the impact of a proposed telecommunication tower on "the value of adjoining or abutting property" as required by the ordinance because they failed to review any actual comparable property sales in that area. In Sun Suites Holdings, LLC v. Board of Aldermen of Garner, two witnesses failed to present "any factual data or background, such as certified appraisals or market studies, supporting their naked opinions." In yet another North Carolina Court of Appeals case, Humane Society of Moore County, Inc. v.

Town of Southern Pines, an appraiser retained by opponents undertook seven case studies and surveys to try to isolate the impact of a proposed animal training facility/shelter on the values of abutting and adjoining property; all were found by the court to be immaterial or insubstantial. Finally, in Weaverville Partners, LLC v. Town of Weaverville Board of Adjustment, an ordinance standard for a special-use permit for multi-family residential complexes required that property values in the "neighborhood" not be "substantially diminished." The Court of Appeals held that a realtor's study of single-family residential values near existing multi-family projects failed to demonstrate that the values were substantially diminished by their close proximity to existing complexes.

Certain conclusions seem clear. Ordinance standards requiring proof that a project will not substantially diminish the value of adjacent or adjoining properties are more demanding than many planners and attorneys seem to assume. It is also possible that the time and effort required to establish an adequate analytical basis for expert testimony in this arena may be more costly than many have thought. Finally, many North Carolina zoning ordinances that use the "no-substantial-diminution-in-the-value-of-adjoining properties" standard for special-use permits put the initial burden of proof on the applicant. If the applicant fails to provide substantial, material, and competent evidence addressing the "no-substantial-diminution" standard, thus initially establishing a prima-facie case, then the zoning board must deny the permit. That is true regardless of whether opponents present any evidence on point or not.

It is ironic that neighborhood groups and those who advocate for third-party intervention in zoning disputes have tended to view the prohibition in G.S. 160A-393(k) a. on certain kinds of lay testimony as a substantial obstacle to their efforts. Given the apparent difficulty that real estate professionals have in conducting the proper analytical studies that can serve as bases for their expert opinions, those lay persons who might be emboldened to try their hand at estimating the impact of someone else's development project on the value of their own property may not realize how fortunate they are that G.S. 160A-393(k) a. discourages them from trying.

So, yes, the way many zoning ordinances are worded, it is the opinions of experts that really count in typical quasi-judicial zoning hearings. If this

is to change, either the standards governing special-use permits need to be rewritten or development project opponents need to become adept at pointing out the flaws in the expert opinions of others.

Quasi-Judicial and Due Process

Commissioners wear many hats as elected officials. A board may sit and act as a ditch authority one day, a health board another day or a decision maker on a land use matter yet another day. When making board decisions related to land use, they generally fall into one of two categories: quasi-judicial decision maker or policymaker. Failing to appreciate the differences in the two roles may create issues and potential litigation for a county and its commissioners.

A legislative act can generally be said to be one that affects the rights of the public as a whole versus a decision affecting one person or making a determination as to one situation. When enacting ordinances, commissioners are acting in a legislative capacity. Such actions involve the exercise of discretion, where the commissioners are balancing competing concerns and choosing among various public policy alternatives. Commissioners may and often do advocate for a certain position or policy. Such advocating is part of the legislative process, entirely appropriate, and recognized as part of the function as a policymaker.

Contrast that with permitting decisions in land use matters. When making decisions about land use applications, a board is acting in a quasi-judicial capacity. The decision affects the rights of one person or a small group versus the public at large. There are three components present when undertaking a quasi-judicial act.

First, there is some type of investigation into a claim—disputed or otherwise—involving a gathering of evidentiary facts, as well as a weighing of those facts. **Second**, those facts are then applied to a prescribed legal standard. **Third**, the board makes a binding final decision regarding the claim or situation, subject only to later judicial review.

When making a quasi-judicial decision in the land use area, a board is undertaking an adjudicative process, gathering facts and applying specific standards in a zoning ordinance to the specific facts gathered, and then making a decision that applies solely to that set of facts. It is quasi-judicial because as a board member, the commissioner is acting as a fact finder (jury) would in a judicial setting, and as a judge in determining and applying the standards (the law) to the facts.

Because of that, different standards apply to commissioners as a quasi-judicial decision maker than when a commissioner acts as a policymaker, undertaking a legislative act. Premature decision making, bias and advocating for a certain outcome can, when wearing the hat of a quasi-judicial decision maker, result in a

court determining that the individual in question did not get a fair and impartial decision maker.

Although several years old, one case that best illustrates how blurring the lines between policymaker and decision maker can create litigation and overturning of a land use decision is Continental Property Group, Inc. v. City of Minneapolis.[1]

This case shows how important it is for commissioners to understand the restrictions that may be placed on them when acting in a quasi-judicial capacity.

The Situation

In 2003, Continental Property Group Inc. (CPG) purchased an option on property located in the Loring Park area of Minneapolis. To build its desired development, CPG applied to the Minneapolis Planning Commission for two necessary conditional use permits and two variances from Minneapolis' zoning requirements.

In August 2004, the city's Community Planning and Economic Development staff reviewed the application and issued a report that recommended that the Minneapolis Planning Commission deny the application. The commission did so later that month.

CPG appealed to the Governing Body. The Governing Body is made up of five members, including at the time Lisa Goodman. The proposed development was in Commissioner Goodman's district.

On Sept. 15, the Zoning and Planning Committee unanimously voted to deny CPG's application. Then the Governing Body unanimously voted to deny CPG's application Sept. 24.

Despite the commission's decision, CPG exercised its option to purchase the property. The company later submitted a new conditional use permit application, which staff recommended that the Planning Commission approve. CPG later withdrew its application. The city imposed a development moratorium in 2005.

Legal Action

Two years later in March, CPG sued the City alleging that its decision on the 2004 application and the 2005 moratorium were arbitrary and capricious, and violated the company's due process and equal protection rights, entitling CPG to relief under the Federal Civil Rights Statute, 42 U.S.C. § 1983. CPG also exercised its right to judicial review under Minnesota Statutes, Section 462.361, Subdivision 1 (2010).

The district court granted the city summary judgment on CPG's equal protection claim, but allowed CPG's due process claim and judicial review of the land use decision under state law to proceed to trial. CPG asserted that Goodman's conduct, relative to the proposed development, precluded CPG from having a fair and neutral hearing on its application. Therefore, it rendered the council's decision arbitrary and capricious under both federal and state law.

At trial, evidence was presented that neighborhood opposition existed to the company's proposed project and that Goodman was involved not only in an effort to assist and organize neighborhood opposition but also to sway the opinions of her fellow commission members. Evidence showed that the opinion of the commission member in whose ward a project is proposed is given substantial weight by other members. CPG argued that Goodman acted as more of an advocate rather than as a quasi-judicial decision maker.

After reviewing the evidence, the district court found that the city violated CPG's procedural due process rights. It also found that the city's decision was arbitrary and capricious under state law. The court awarded CPG $165,369 in compensatory damages for out-of-pocket expenses and $357,523 in attorney fees and costs.

Both parties appealed. CPG's appeal was based in part on the amount of damages awarded. The company sought approximately $11 million in damages.

Court of Appeals Decides

The Court of Appeals reversed the damage award for the alleged due process clause violation. The court found that because CPG did not have a protected property interest in either the conditional use permit or variance application process, it was not entitled to protections of the due process clause. However, the court upheld the district court's decision that the council's decision was arbitrary and capricious under state law.

In remanding the case, the court noted that a decision is arbitrary and capricious "if the decision maker relied on factors it is not permitted or intended to consider."[2] The council must also act in good faith.[3]

The court noted that although there was objective evidence in the record to support the decision to deny the applications, Goodman's conduct, as presented in the trial court record, established that the commission relied on factors it was not intended or permitted to consider when denying CPG's application. Therefore, the court concluded that the commission's decision was arbitrary and capricious.

Objectivity Is Key

Elected board members must be mindful of potentially partisan/advocacy conduct when sitting in a quasi-judicial capacity. Although elected officials need to be responsive to constituent needs and opinions, actions or statements evidencing bias or a prejudging of a matter before a hearing could potentially result in a court reversing the decision of the board.

When acting as quasi-judicial decision makers, elected/appointed board members must ensure that they are listening to the evidence presented in an objective/neutral manner and on the record before the board. Failing to do so exposes the board to having its decision overturned on appeal, even when the decision otherwise may have been supported by the record.