

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Wednesday, November 4, 2009

3:30 P.M. Special Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Michael D. Page, Vice-Chairman Ellen W. Reckhow, and Commissioners Becky M. Heron, Brenda A. Howerton, and Joe Bowser.

County Attorney Lowell Siler, Kathy Everett-Perry, Assistant County Attorney, Katrina English, Intern, County Attorney's office, A. Fleming Bell, Professor of Public Law and Government, and Angela Pinnix, Administrative Assistant, Clerk to the Board's office.

Absent: None

Presider: Chairman Page

Board Procedures, Open Meetings, and Ethics

A. Fleming Bell II, Professor of Public Law and Government, gave a presentation to the Board about Board procedures, open meeting requirements, and ethics. He discussed the following:

How Are Small Board Different?

1. The board often acts informally.
2. The board generally wants to allow active participation by all members
3. The board has continuous existence.
4. The board members may not be able or willing to learn and follow complex procedural rules.

Mason's Ten Principles of Parliamentary Law*

1. The board can take only those actions that it has authority or jurisdiction to take.
2. The board must meet in order to act.
3. All board members must receive proper notice of meetings.
4. The board may act only with a quorum
5. There must be a question for the board on which it can decide. Except when electing their own officers or voting on appointments, legislative bodies proceed by voting yes or no on specific proposals put forward by one or more members. Each member has the right to know at all times:
 - a. What question is before the board; and
 - b. What effect a yes or no vote would have on that question.
6. There must be opportunity for debate.
7. Questions must be decided by vote, not by consensus.

8. Votes are decided by a majority. Usually a simple majority suffices, but sometimes an extraordinary majority is needed
9. There must be no fraud, trickery, or deception in the board's proceeding.
10. The board's rules must be applied consistently.

*Adapted from Mason's Manual of Legislative Procedure

Some Other Important Procedural Principles

1. The board should proceed in the most efficient manner possible.
2. Every member should have an equal opportunity to participate.
3. The board's rules of procedure should be followed consistently.
4. Decisions should be based on the merits, not on manipulation of the rules.
5. Bell's caution: Make sure your rules help, not hinder.

Six Areas Where Boards Often Have Procedural Problems

1. Setting the Agenda—While the task of preparing a preliminary agenda may be delegated, the board is ultimately responsible for its regular meeting agendas.
2. Determining Which Motion is in Order—Only one substantive (main) motion may be pending, but several procedural motions may be handled in the meantime, in order of precedence. Also, are seconds needed for motions with a small board?
3. Postponing and Reviving Matters
 - a. Compare the motions:
 - i. To table (defer consideration);
 - ii. To remove from the table (revive consideration);
 - iii. To prevent reintroduction; and
 - iv. To postpone indefinitely
 - v. Also, the motions to reconsider; and
 - vi. To rescind or repeal.
4. Handling Debate
 - a. All members should have a similar opportunity to speak (see Mason's Principles, No. 6)
 - b. In the interest of fairness, the presiding officer may wish to step down if she/he wishes to debate actively (this may be impractical with a three-member board).
 - c. The motion to "call the previous question: must be voted on by the board.
 - d. The board should decide in advance how it wishes to handle comments from the floor.
5. Some Roles for the Board Chair
 - a. To provide for orderly, fair meetings, where the majority rules, but the minority is heard.
 - b. To act as the board's leader, and to work closely with the elections director.
 - c. To interpret the board's rules, with a right for members to appeal the chair's rulings to the board.
 - d. To represent the board in public.
 - e. To make motions and vote.
6. Procedures for Different Types of Meetings
 - a. Meetings dealing with administrative and legislative topics: no specific procedural requirements or rules about ex parte contacts apply. "Actions

minutes” are enough: record actions and the existence of the conditions need to take action.

- b. Quasi-judicial proceedings: The board must observe court-like procedures. E.g., no bias; take sworn and relevant testimony; take detailed or verbatim minutes; and provide for cross-examination of witnesses. Members should avoid ex parte contacts.
- c. Recessed meetings: meetings may be recessed to a time and place certain, if followed correct procedure.

Citizens Participation in Board Meetings: Some Guidelines

1. Some boards choose to hear directly from citizens primarily during general citizen comment periods and legally required public hearings. The board of commissioners must hold at least one public comment period during a regular meeting each month.
2. Boards may establish reasonable rules governing the time, place, and manner in which the public comment period is conducted.
3. The board’s rules governing public participation should be explained in advance to the participants.
4. Courtesy is a two-way street.
5. When a board opens the floor to the public for discussion on an issue, it creates a “limited public forum.” While courtesy may be requested, it cannot always be demanded.

Additional Information

- Suggested Rules of Procedure for the Board of County Commissioners
- Suggested Rules of Procedure for Small Local Government Boards
- The Zoning Board of Adjustment in North Carolina (rules for quasi-judicial meetings)

These publications are available from the Publications Sales Office, UNC School of Government, Commissioner Bowser#3330, Knapp-Sanders Building, Chapel Hill, N.C. 27599-3330; Phone: 919-966-4119 Fax: 919-962-2797; Internet: www.sog.unc.edu: Email: sales@sog.und.edu.

Mr. Bell shared videos with the Board that displayed ways to not conduct a meeting. He continued his presentation briefly conferring the following:

Open Meetings

- Public Bodies (G.S. § 143-318.10)
- Official Meetings
- Public Notice of Official Meetings (G.S. 143-318.12)
- Special Meetings
- Emergency Meetings
- Recessed Meetings
- Closed Sessions (G.S. 143-318.11)

Minutes and General Accounts

- Miscellaneous Provisions
 - No secret ballots
 - No action by reference

- Public has right to tape or film open meetings.
- Potential Remedies
 - Declaration that a violation occurred
 - Injunction against future violations
 - Invalidation of tainted actions
 - Possible payment of other side's attorneys' fees, if suit against government is successful

Ethics for North Carolina Local Government Elected Officials

- Defining ethics and ethical behavior
- Distinguishing between legal and ethical standards
- Thinking about differences between your public life and your private life
- Making ethical decisions
- Codes of ethics
 - Why Do We Use Them, and What are their Limitations?
 - Drafting a Reasonable Code of Ethics
 - Role of Education
- Conflicts of Interest in Contracting
 - G.S. 14-234 – Conflicts of interest
 - G.S. 14-234.1 – Misuse of secret information
 - G.S. 133-32 – Gifts and Favors
- Conflicts of Interest in Voting
 - G.S. 153A-44 (counties) and G.S. 160A-55 (cities)

Mr. Bell explained the dangers of conducting a meeting through email. He provided logical reasoning as far as agenda items being pulled by Board members. He continued to address the following concerns:

- Citizens comments
- Bias discussions
- Public comments at Board of County Commissioners meetings
- Board and Commission recommendations
- Ethical and Non-ethical issues regarding Closed Sessions
- Violating Open meetings law
- Whether State rules supersede the County's process regarding the time an individual is required to speak.

The Board agreed to reconvene discussions at the December 7 Worksession.

Respectfully Submitted,

Angela M. Pinnix
Clerk to the Board's office