



Legislative Hearings vs. Evidentiary Hearings: A Citizen's Guide

In much of its work, the Southern Pines Town Council acts in a “legislative” capacity to adopt, amend or repeal ordinances. When the Town Council considers such legislative matters, council members solicit and consider concerns of many different constituents. Members of Town Council 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 Town Council will often hold a public hearing to solicit comments from the public, where citizens may directly address decision-makers. These “**legislative hearings**” have only informal rules for the conduct of the hearing, including how long and on which topics members of the public may speak. During a legislative public hearing, any citizen may give his or her opinion on the issue being discussed for as long as the Town Council allows.

Less frequently, the Town Council conducts more formal hearings, similar to a courtroom proceeding, in a “**quasi-judicial**” capacity. Under North Carolina statute,¹ whenever a decision-making body like the Town Council uses pre-determined discretionary standards to review and render a quasi-judicial decision on a particular proposal, usually in matters involving land use, it must conduct an “**evidentiary hearing.**” The Town Council conducts such evidentiary hearings when considering applications for special use permits and preliminary development plans that are part of planned development projects. Similarly, some of the Town Council’s appointed boards and commissions such as the Board of Adjustment and Historic District Commission also conduct evidentiary hearings prior to rendering quasi-judicial decisions on variances and certificates of appropriateness, respectively. Formal evidentiary hearings are held, in part, to ensure that the appropriate board applies the pre-determined standards fairly to every applicant. Information concerning the proposal can only be presented at scheduled hearings. Neither the applicant nor other interested persons may discuss the matter with the members of the Town Council or an appointed board outside the hearing.

It is important to know that in an evidentiary hearing:

- The applicants present **evidence** that a proposal meets a series of **pre-determined standards** that must be met before the proposal may be adopted. The standards are written in the town’s Unified Development Ordinance.² Opponents may present evidence that the proposal does *not* meet the applicable standards. Testimony and other evidence that is not substantial, competent, and materials may be objected to and ruled inadmissible for consideration in reaching a decision.

¹ G.S. §160D-102(28)

² Available at <https://southernpinesudo.org/>

- While any witness may present competent, material and substantial evidence regarding the proposal meeting the specifically defined standards, **only those with standing to appeal as defined under North Carolina statute³ may participate as a party** in the evidentiary hearing process. Participating as a party may include, for example, objecting to the introduction of evidence or cross-examining witnesses.
- **Witnesses are sworn or affirmed** as in a court of law. Qualified experts in a particular discipline may present most opinion testimony. The controlling North Carolina statute⁴ specifically states that a lay witness *cannot* provide opinion testimony about any of the following:
 1. Whether the use of property in a particular way affects the value of other property.
 2. Whether the increase in vehicular traffic resulting from a proposed development poses a danger to the public safety.
 3. Matters about which only expert testimony would generally be admissible under the rules of evidence.
- Because the **ONLY** purpose of an evidentiary hearing is to analyze evidence as to whether 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 unrelated issue can be considered by the reviewing body.
- **Testimony is subject to the rules of evidence set out in State statutes**. Just as happens in a courtroom, if an opposing party objects to inadmissible evidence, the objection will be sustained, and the inadmissible evidence may not be considered in reaching a decision.
- **All witnesses who testify may be cross-examined** by one with standing, as in a court of law.
- **The mayor, who Chairs the proceedings, is responsible for:** recognizing those participating before they may be heard, ruling on objections as well as requests from participants regarding procedure, ruling on the admissibility of evidence, and placing reasonable and equitable limits on the presentation of evidence so that matter at hand is heard without undue delay.
- At the conclusion of the evidentiary hearing, the Town Council (or other board or commission holding the hearing) may render a decision on **whether the proposal is in accordance with the standards of the Unified Development Ordinances**. This decision is based on information presented and discussed at the hearing, so while a vote on the proposal may occur at the end of the evidentiary hearing, the formal written documentation of the decision required under North Carolina statute⁵ is prepared by town staff following the hearing and formally approved at the next Town Council meeting.

³ G.S. §160D-1402(c)

⁴ G.S. §160D-1402(j)(3)

⁵ G.S. §160D-406(j)