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IDEAL QUALIFICATIONS FOR ZONING BOARD HEARING MEMBERS

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In April 2015, the Pennsylvania Governor's Center for Local Government Services published the Eleventh Edition of its ongoing Planning Series. Issue #6 specifically discusses Zoning Hearing Boards (ZHBs) and, in addition to the basic information about how their members are appointed and their responsibilities in the position, it offers some guidance for those who have the duty to appoint those members and for those who are looking to serve. The piece offers insight into those personal traits that a ZHB member should have.

As stated in the Planning Series, "The primary purpose of the zoning hearing board is to help assure fair and equitable application and administration of the zoning ordinance." Impartiality among the ZHB members must occur both in appearance and in practice. As the ZHB functions in a quasi-judicial capacity, an applicant appearing before the board is guaranteed a constitutionally-protected right of due process. Such a fundamental right requires that the ZHB abides by due process standards and avoids the appearance of impropriety. According to the courts, "A showing of actual bias is unnecessary in order to assert a cognizable due process claim; the mere potential for bias or the appearance of non-objectivity may be sufficient to constitute a violation of that right." *Kuszyk v. Zoning Hearing Bd. of Amity Township*, 834 A.2d 661, 665 (Pa. Cmwlth. 2003).

In some limited instances, recusal of an individual member is necessary to guarantee an applicant's due process rights. A ZHB member should have the self-awareness to recognize when recusal would be appropriate either for substance or appearance, even if that member believes he or she could act impartially on an application. Any member who has admitted to be predisposed on an issue or whose consideration of an application may be based on information other than that evidence which is presented at the hearing should recognize that doing so may result in the appeal of the ZHB's decision and, possibly, costly litigation.

Additionally, the authority of the ZHB is limited by the Municipalities Planning Code and local zoning ordinance. Thus, members of the ZHB should realize both the responsibilities associated with their position as well as the limits of their power. The members should be informed about the ZHB's specific functions and its defined place in local planning, including its limited jurisdiction. They should recognize the ZHB's role in

the broader scheme of planning and zoning. The ZHB is empowered to enforce the zoning ordinance as written, not the way its members wished it were.

Ultimately, a ZHB may identify problems with the zoning ordinance in its frequent review of its provisions or through the multiple applications before it. Such issues may include inconsistencies, ambiguities, or plain errors. While the ZHB does not have the power to make any alterations or amendments to the zoning ordinance and must enforce it as written, it should communicate the identified problems to the zoning officer and planning commission, which can, if necessary, initiate amendment to the zoning ordinance.

As noted in the Planning Series, “The zoning hearing board has the power to assure the fair and equitable application of the zoning ordinance. Abuses of this power can, in effect, undermine the zoning ordinance.” Unfair or improper decision making by ZHB officials can result in public upset, poor planning, ineffective preservation and utilization of local resources, and, of course, the decision of the ZHB being overturned on appeal. Therefore, the Board of Supervisors should make ZHB appointments carefully with the recognition that the selected individual will play an important part in the growth and development of the municipality.

Another reason to make the appointment carefully is that a ZHB member may be removed from office only on the basis of just cause. Specifically, just cause allows the removal of a ZHB member for committing an unlawful act in office, committing a lawful act in an unlawful manner in office, and failure to perform the duties of the office. If the board of supervisors acts to remove a ZHB member, that individual has the right to notice and a hearing. Thus, the removal of a ZHB is not necessarily an easy option to take if the Supervisors find that their choice is not suitable for the position.

As with any position which requires working with the public, ZHB members should possess the skills necessary in interacting with the public, including patience and communication skills. A prospective ZHB member should be interested in the future of the municipality but must acknowledge that his or her personal opinions are subordinate to the provisions of the zoning ordinance and that his or her duty is to effectuate its terms. Additionally, a ZHB member should have the dedication and time to serve the township in this role. While it is a part-time, appointed position, continuity among ZHB members is preferred, if not required, in hearing applications and rendering decisions as zoning relief is requested.

About Jessica K. Wiesak

Jessica Karpuk Wiesak focuses her practice in education, special education, municipal, and land development law. After working as a summer associate for the firm in 2012 and 2013, Jessica joined the firm full-time after graduating, cum laude, from the evening division of Temple University Beasley School of Law. During her first two years of law school, Jessica taught high school social studies full-time. While at Temple, she served as an ACE (Academic Core Enrichment) Program counselor and won awards for outstanding oral advocacy, best paper, and distinguished class performance. At graduation, she received the Catherine Donahue Memorial Award and Reuben E. Cohen Memorial Award.

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