

City of Flagstaff

Board of Adjustment Training



Board of Adjustment Training: Roadmap

- Part One: Overview of Roles & Responsibilities
- Part Two: Hearing Procedures
 - Meeting Procedure
 - Decisions of the Board
 - Open Meeting Law
- Part Three: Conflicts of Interest
- Part Four: Best Practices – Rules of Procedures, Decorum, & Final Takeaways



Part One:
Overview of Roles &
Responsibilities

Board of Adjustment Powers

- State law requires a Board of Adjustment – A.R.S. § 9-462.06.
- Chapter 2-10 of Flagstaff’s City Code implements State law.
- Code also defines the Board of Adjustment’s powers and duties.



Board of Adjustment Powers

- Hear and decide appeals in which it is alleged there is an error in an order, requirement, or decision made by an administrative official in the enforcement of the Zoning Code.
- Hear and decide appeals for variances from the terms of the Zoning Code.



Interpretation of the Zoning Code – 2-10-001-0004

- A.R.S. § 9-462.06: The Board of Adjustment shall “hear and decide appeals in which it is alleged there is an error in an order, requirement or decision made by the Zoning Administrator in the enforcement of a zoning ordinance...”
- In Flagstaff, any person that believes they have been aggrieved by any decision by the Zoning Administrator may appeal to the Board of Adjustment.
- An aggrieved person must have a direct interest in the affected property (i.e., owner, mortgagee, or lessee). An appeal stays all proceedings in the matter.
- An aggrieved person has the right to present their case by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination of witnesses.



Appeals of Interpretations – 10-20.80.020

- **Filing of Appeal:**

- Initiated by any person aggrieved by a decision of the Zoning Administrator.
- Notice of Appeal filed with Zoning Administrator and Board of Adjustment within 10 calendar days of the decision.
- Zoning Administrator transmits all administrative papers, records and other information to Board.
- Filing of the appeal stays any proceedings in furtherance of the contested action – unless the stay imposes an imminent peril to life or property.
- Appeal is heard at a public meeting and published as a Public Hearing.
- Zoning Administrator submits a staff report with a recommendation on whether the appeal should be granted or denied, and the grounds for the recommendation.



Appeals of Interpretations – 10-20.80.020

- **Decision:**

- The Board **shall review** the application.
- Shall **reverse or modify the order**, decision, determination or interpretation under appeal **only upon finding an error in the application of these regulations on the part of the administrative officer** rendering the order, decision, determination or interpretation.
- Shall **grant the appeal**, grant the appeal **subject to specified conditions**, or **deny the appeal**.
- In **modifying the order**, decision, determination, or interpretation, the Board **shall have all the powers of the officer from whom the appeal is taken**.
- the record of the public meeting shall **state the reasons and findings of fact used in reaching its decision**.



Appeals of Interpretations – 10-20.80.020

- **Findings Required:**

- When making a decision the Board **shall make findings of fact.**
- Findings shall be **based upon consideration of the application, plans, testimony, reports** and other **materials that constitute the record.**
- Findings **shall be in writing or included in the minutes.**



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Appeals of Interpretations – 10-20.80.020

- **Effect of Reversal or Modification:**

- If the Board **reverses or modifies an order**, decision, determination, or interpretation of an administrative officer, the **appellant shall** be required to **follow the procedures of this Zoning Code for the approval of any permits** in order to proceed with the development.
- All orders, decisions, determinations and interpretations made by the review authority as part of those procedures shall be consistent with the reversal or modification granted to the appellant.



Appeals of Interpretations – 10-20.80.020

- **Appeal of Board of Adjustment Decision:**

- The appellant or any other person aggrieved by the decision of the Board may **appeal the decision to the Superior Court.**
- Appeals to the Superior Court shall be filed by way of **special action** within **30 days after** the Board of Adjustment renders a **decision.**
- An **appeal** to the Superior Court does **not automatically stay proceedings** on the decision, the Superior Court would have to issue a stay upon request.



Granting Variances – 2-10-001-0004

- The Board may *only* grant a variance when an applicant has submitted a written application that shows:
 - **Special circumstances exist which are peculiar to the property**, structure or building involved and which are not applicable to other lands, structures or buildings within the same district;
 - The strict application of the Zoning code would **deprive the appellant of rights commonly enjoyed by other properties of the same classification in the same zoning district**;
 - The alleged hardship is **not the result of actions by the appellant**; and
 - Any variance is subject to such conditions as will ensure that the adjustment authorized shall not constitute **a grant of special privileges** inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located.



Granting Variances – 2-10-001-0004

- The Board may ***NOT***:
 - Grant a variance for a change in ***uses permitted or any changes in the terms of the zoning ordinance.***
 - Grant a variance if the special circumstances of the property is ***self-imposed***, i.e., caused by the applicant themselves.



Part Two: Hearing Procedures

Nature of Board Proceedings

- **Board serves in a “quasi-judicial” capacity**, i.e., the Board has the power to hold hearings and to make decisions in the general manner of a court for matters within the Board’s jurisdiction. During a hearing, the Board is limited to the evidence presented at the hearing.
- **Ex Parte Communication Prohibited.** Every person is entitled to a fair and impartial hearing, therefore, no communications related to the matter should be made to a Board member outside the Board meeting.

Any ex parte communication should be placed in the public record.

- **The Board has no authority to amend** the Zoning Code or correct what it considers to be an unwise requirement.
- Written findings shall be made part of the Board’s record to explain the basis of the decision made.



Nature of Board Proceedings

- Notice: Letter to applicant & posting.
- Board meetings and hearings are public.
- Chair convenes Board meeting – **must have at least 4 members.**
- Chair introduces case and opens public hearing.
- Staff presents report and responds to questions from Board members.
- Questions of parliamentary procedures are decided based on Robert's Rules of Order unless otherwise addressed in the Board's Rules of Procedure.



Nature of Board Proceedings

- Staff presentation.
- Applicant/Appellant presents case, including witness testimony, and responds to questions from Board members.
 - Chair has authority to administer oaths and take evidence pursuant to A.R.S. 9-462.06(B): “I, _____, do solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth.”
- Other parties/Public comment and testimony are taken.
- Appellant may rebut comments from public or staff.
- Staff may provide clarification/information regarding matters raised during the public hearing.
- Public hearing is closed.
- Concluding comments from staff.
- Board deliberates and decides the case.
 - Motion and roll call vote.



Decisions of the Board

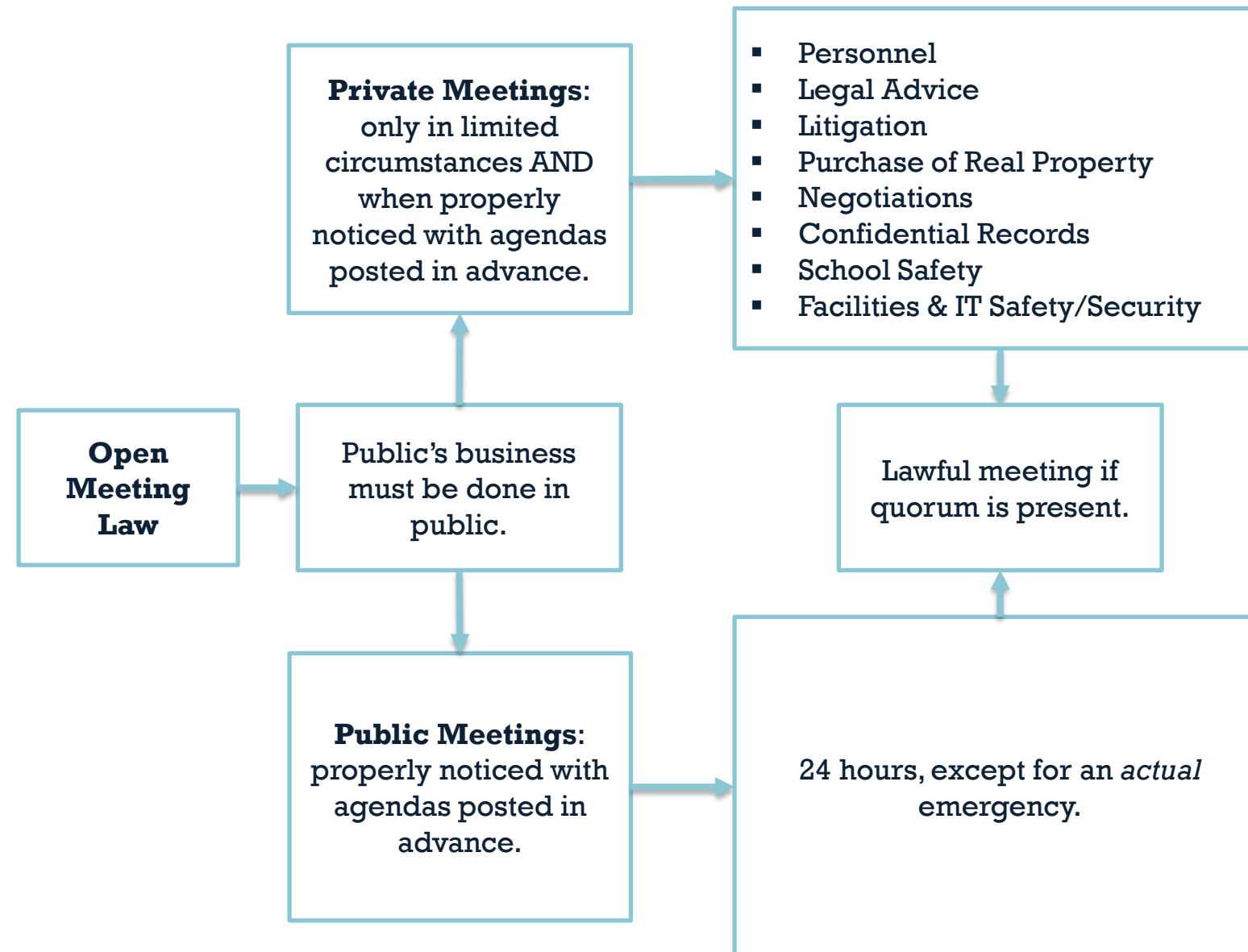
- Must be in writing, detailed and include appropriate findings. File in City Clerk's office.
- Record should be clear, with exhibits clearly labeled and made a part of the record.



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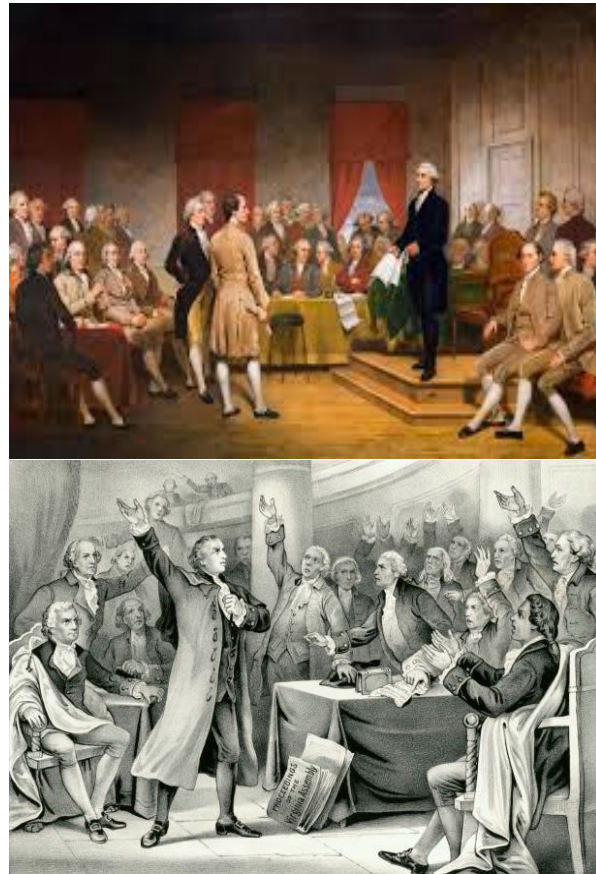


Open Meeting Law Applies to Board Meetings



Open Meeting Law Applies to Board Meetings

How Meetings Started



How they have Changed



A meeting occurs any time a *quorum* (majority – vacancies don't reduce quorum requirement) of the public body discusses, proposes, or takes legal action.



Open Meeting Law Applies to Board Meetings

- Best Practices:
 - Be mindful of who you “friend” online.
 - Do not post about your board matters if “friends” with members, especially during a meeting!
 - Do not comment on their or their friends’ posts if the matter relates to your public business (legal action).
 - Do not create a group chat that includes a quorum of your body.



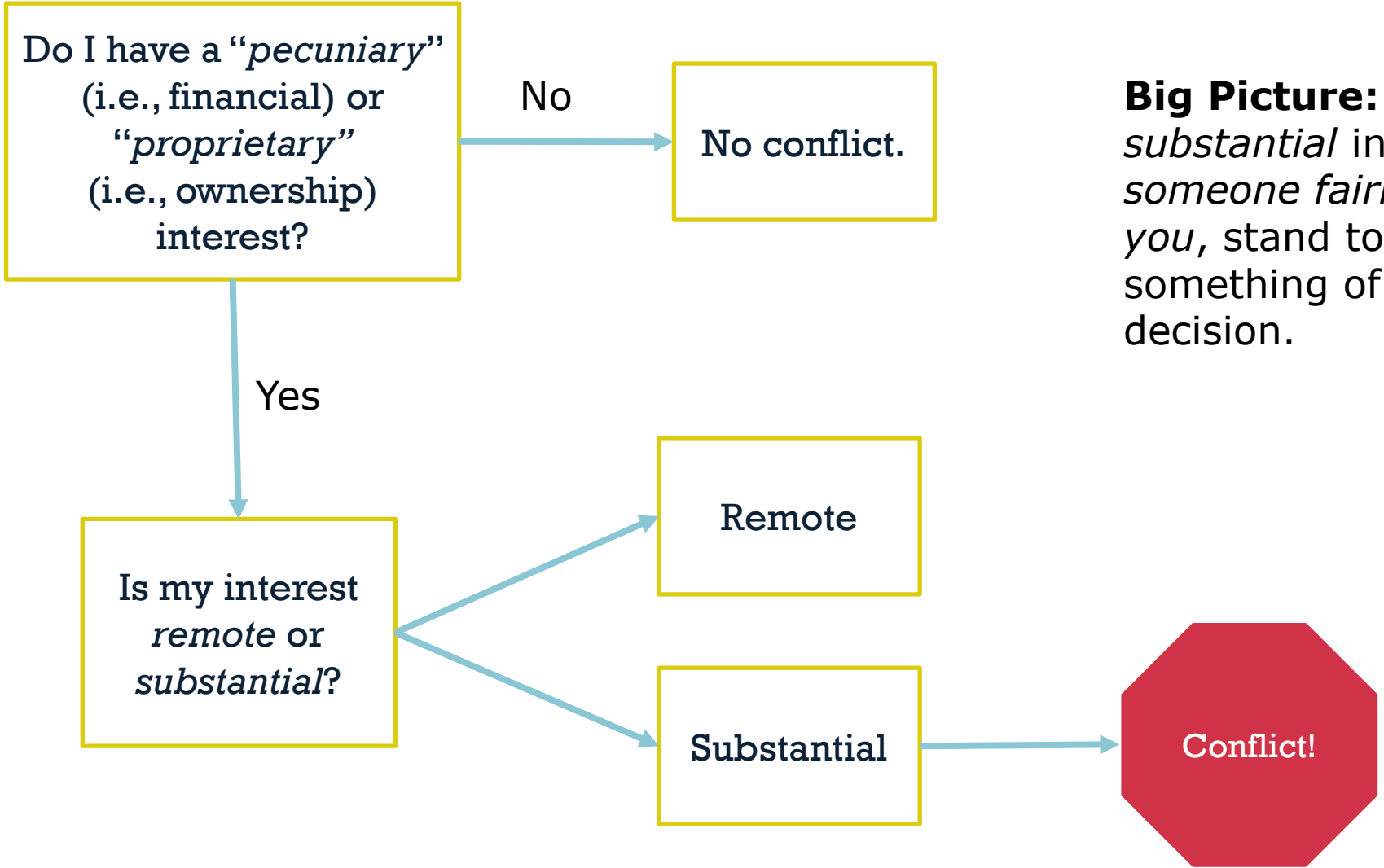
Part Three: Conflict of Interest

Conflict of Interest

- A Board member must know when to abstain.
- Must analyze every matter that comes before the Board to determine if there is a conflict of interest.
- Determine prior to the meeting.
- Follow the statutory mandates for disclosing your conflict of interest - A.R.S. §§ 38-501 – 38-511.
 - Consult with City Attorney.
 - Disclose the interest in the official records of the City.



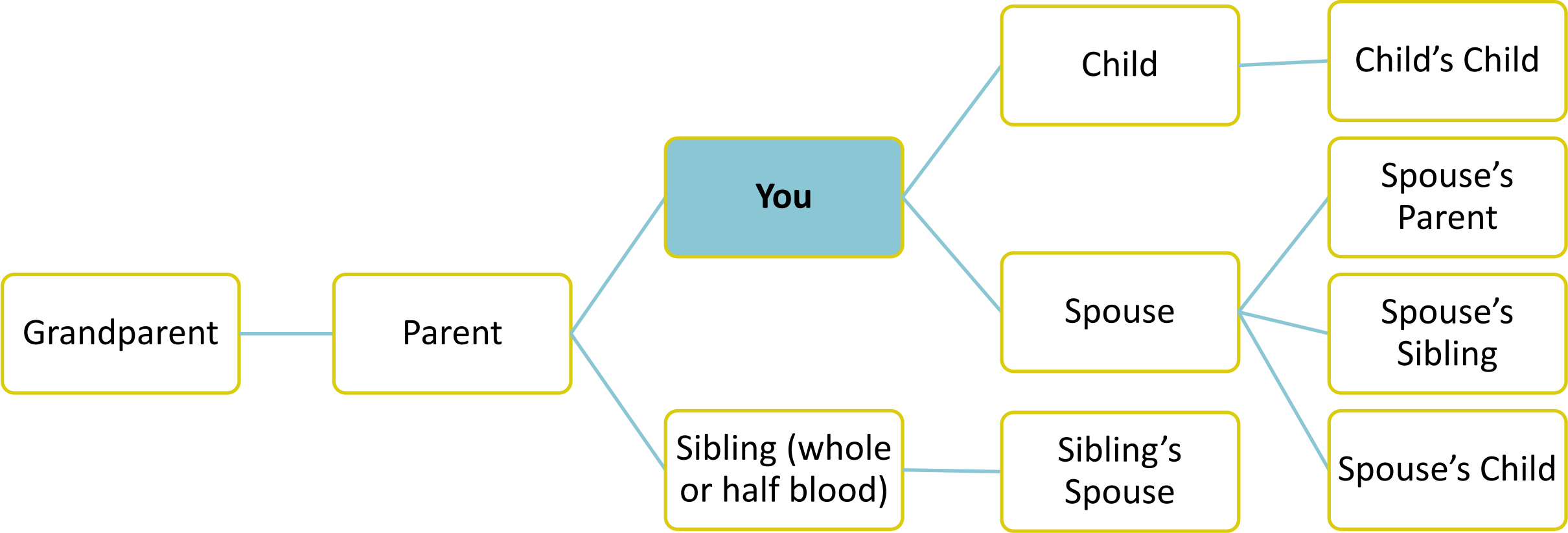
Conflict of Interest



Big Picture: You have a *substantial* interest when you, or someone fairly closely related to you, stand to gain or lose something of value from the decision.



Conflict of Interest - Who is a considered closely related?



Conflict of Interest

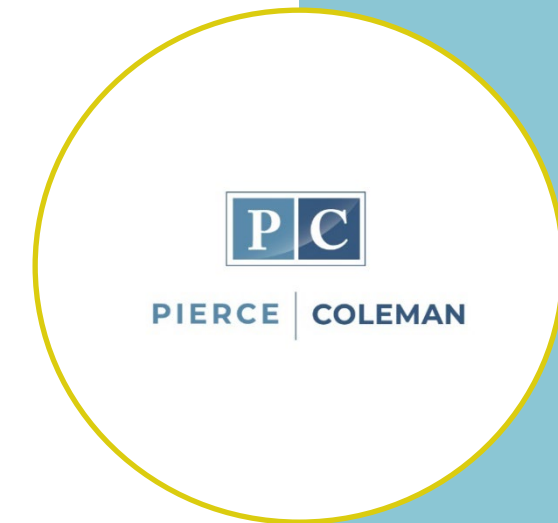
- If you determine you (or a closely related family member) has a substantial interest, you **should**:
 - Disclose your interest in the official records of the City.
 - Recuse yourself and refrain from participating in any manner in the decision or contract, including any discussion of the matter.
 - If there is any question, get the opinion of the City Attorney; it may help you avoid “reckless” or “negligent” conduct.
- You **should not**:
 - Ignore it.
 - Think it will go unnoticed.
 - This could result in a *felony criminal charge*: it is a class 4 felony for a public servant to solicit, accept, or agree to accept any benefit upon an understanding that his or her vote, opinion, judgment, or other official action may thereby be influenced.



Part Four:
**Best Practices – Rules of
Procedures, Decorum, &
Final Takeaways**

Best Practices

- Do not miss meetings.
- Create a good public impression of your city.
- Respect the chair/be recognized to speak.
- Dress appropriately.
- Do not mingle with the audience.
- Avoid privately discussing a case.
- Do your homework.
- Do not signal how you will vote.
- Disqualify yourself from conflicts.
- Rotate the seating.
- Seriously consider staff recommendations.
- Be polite and impartial.
- Be attentive.
- Do not interrupt a presentation.
- One speaker at a time.
- Speakers should address the Board.
- Do not use first names.
- Do not indulge in personalities.
- Be on time.
- Do not be critical of planners/staff doing their job.
- Do not use your questions or comments to make anyone look like a fool.



Best Practices

- Do not get involved in arguments.
- Be sure the public can see diagrams and maps.
- Do not allow speaking from the audience.
- Keep speakers at the podium.
- Do not get involved in neighborhood quarrels.
- Have a thick skin — do not hold grudges.
- Be objective to weak and strong alike.
- Do not try to fix a bad deal.
- Give a reason for your decision.
- Ask for staff help when necessary.
- Do not answer technical questions.
- Grant or deny the request—do not try to “split the baby.”
- Vote by roll call.
- Do not react to the outcome of a case.
- Discourage postmortem remarks.
- Delay the hearing if you need more information.
- Select a chair who can run the meeting well (not by seniority or rotation).



Best Practices

- Deal with jurisdictional questions up front—if the required notice didn't happen, continue the case until it does.
- Know and follow Arizona laws that pertain to Board members:
 - Open meeting law—properly noticed meetings; transparency; no private meetings of Board members.
 - Conflicts of interest—if you have a financial or ownership interest, don't participate unless/until your city attorney determines it is a “remote” interest.
 - Public records—don't put anything about a case in an email or text that you'd be embarrassed to read on the front page of the paper.



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Thank you!

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