



AGENDA
FERNANDINA BEACH CITY COMMISSION
WORKSHOP
JUNE 19, 2018
5:00 PM
CITY HALL COMMISSION CHAMBERS
204 ASH STREET
FERNANDINA BEACH, FL 32034

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PLEDGE OF ALLEGIANCE**
- 4. PRESENTATION**
 - 4.1 **QUASI-JUDICIAL HEARINGS** - *City Attorney Tammi Bach will present on the quasi-judicial process for hearings.*
- 5. PUBLIC COMMENT**
- 6. ADJOURNMENT**

ANY PERSON WISHING TO APPEAL ANY DECISION MADE BY THE COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING WILL NEED A RECORD OF THE PROCEEDINGS, AND, FOR SUCH PURPOSES, MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS MADE.

Persons with disabilities requiring accommodations in order to participate should contact the City Clerk at (904) 310-3115 or TTY/TDD 711 (for the hearing or speech impaired).

CITY COMMISSION AGENDA ITEM
City of Fernandina Beach



SUBJECT: Quasi-Judicial Process

ITEM TYPE: Presentation

REQUESTED ACTION:

SYNOPSIS: City Attorney Tammi Bach will present information on the quasi-judicial process as it relates to the City Commission and the various Boards.

FISCAL IMPACT: No fiscal impact.

CITY ATTORNEY COMMENTS:

CITY MANAGER RECOMMENDATION(S):

Tammi E. Bach, City Attorney 06/13/2018

Dale Martin, City Manager 06/14/2018

Date: June 13, 2018

Submitted By: Katie Newton, Legal Assistant

COMMISSION ACTION:

Procedures for Quasi-Judicial Hearings

- ☐ Ask Commissioners to disclose Ex-Parte Communications
 - *Please disclose the nature of any communications*
- ☐ Ask City Attorney to Present the Quasi-Judicial Procedures
- ☐ Ask City Clerk to Administer the Oath to Anyone Who Wishes to Speak
 - ☐ Case Presentation by City Staff
 - ☐ Case Presentation by Applicant
 - ☐ Open the Hearing to Others - Citizens opportunity to speak
 - ☐ Close Public Hearing
 - ☐ Further Comments from Applicant
 - ☐ Commission Discussion
 - ☐ Motion + Second to the Motion
 - ☐ Secretary to "Call the Question or the Vote"

QUASI JUDICIAL PROCESS

City Commission Workshop

June 19, 2018

WHAT IS A QUASI-JUDICIAL HEARING?

- A hearing held by a Decision-Making Body (i.e. City Commission, Board of Adjustment, etc.) wherein existing policies and regulations are applied to a specific property and due process requirements are complied with for the hearing.
- The Decision-Making Body makes findings of fact and conclusions of law on the issue.
- Typically, a property owner (applicant) will request a rezoning, plat approval, or variance.

WHY DO WE HAVE QUASI-JUDICIAL HEARINGS?

- The Florida Supreme Court changed the law on zoning, variances, and other land use approvals from a legislative process to a quasi-judicial one.
- Legislative processes create policy – Quasi-Judicial actions occur when the facts of a particular situation are applied to the policy.

DEFINITIONS

- Applicant: The owner of record, or owner's agent, when the application is initiated
- Competent Substantial Evidence: Testimony, documentation, or other evidence based on personal observation
- Decision Making Body: The City Commission or authorized Board that makes a recommendation or decision on an application or decides the appeal.
- Ex-Parte Communication: Communication, oral or written, between members serving on the Decision Making Body and the public, other than those made on the record at the hearing.
- Material Evidence: Evidence that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.

KEY POINTS TO NOTE

- The Decision-Making Board must make its decision based on the testimony in front of it. They may not consider anything outside of the public hearing (other than common knowledge). It is intended to not be political.
- The record is very important. The record established at the hearing will determine the outcome of the case. There must be competent and substantial evidence presented to support the decision of the Board.
- Testimony must be relevant, credible, and oriented to the standards set forth in the Code of Ordinances, Comprehensive Plan, and Land Development Code.

WHEN & WHERE ARE QUASI-JUDICIAL HEARINGS NEEDED?

- City Commission:
 - Preliminary and Final Plats
 - Annexation Ordinances (1st Reading)
 - Zoning Ordinances (1st Reading)
 - Variances
- Special Magistrate Hearings
- Code Enforcement & Appeals Board:
 - Alleged Violation of City Code Cases
- Historic District Council:
 - Certificates of Appropriateness
 - Variances
- Board of Adjustment:
 - Variances

HEARING PROCESS

- The Mayor or Chair leads the Quasi-Judicial Hearing process
- Commissioners/Board Members will be asked to disclose ex parte communications
- The City Attorney will present the quasi-judicial procedures
- The City Clerk/Recording Secretary will administer an oath to all parties who wish to speak

HEARING PROCESS

- Staff will present case
- Applicant will present
- Open the public hearing to citizens
- Close the public hearing
- Further applicant comments
- Commission discussion
- Motion + Second to the Motion
- Secretary to “Call the Question or Vote”

SPECIAL CONSIDERATIONS

- **Ex Parte Communications** are presumed prejudicial and are discouraged, unless specific disclosure procedures are adopted by resolution or ordinance. (See section 286.0115 Fla. Stats.)
- The City Attorney recommends adopting procedures for disclosure of ex parte communications to reduce the presumption of prejudice.
- **Due Process and Fair Hearing:** Board Members shall not publicly take a position on a matter prior to the actual hearing or such Board Member is disqualified from voting on the matter. (See *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So.2d.253 (Fla. 1941); *Board of Public Instruction of Broward County v. State ex. Rel. Allen*, 219 So.2d430 (Fla. 1969))

SPECIAL CONSIDERATIONS

- **Application of correct law:** Board must apply the law applicable to the decision. (i.e. Land Development Code, Comprehensive Plan)
- Apply the law as it exists; rather than how a Board member would *like* it to be. This is the principal limitation on the quasi-judicial power.
- Quasi-Judicial Decisions must be supported, in the record, by evidence that is both legally **competent** (admissible under legal rules of evidence) and **substantial** (real, material, pertinent, and relevant).
- **Expert Testimony** is competent substantial evidence, and City Planning staff are long recognized as expert testimony sufficient to sustain a quasi-judicial zoning decision. (See *ABC Real Estate Development, Inc. v. St. Johns County*, 608 So.2d 59 (Fla. 5th DCA 1992), and *Battaglia Fruit Co. v. City of Maitland*, 530 So.2d 940 (Fla 5th DCA 1987)).
- **Relevant v. Irrelevant Testimony:** Testimony must be probative or competent as to whether the standards in the City laws have been satisfied. The merits of the application rather than the number of opponents should be the controlling consideration.

EXAMPLES OF IRRELEVANT TESTIMONY

- Application for final residential neighborhood plat:
 - Neighbors testify as to increased traffic, light, and noise problems if approved
- Application for rezoning for medical marijuana dispensary:
 - Residents testify they object to use of marijuana and dispensary would attract undesirable patients to neighborhood
- Application for rezoning from commercial to residential for tiny home development:
 - Residents testify their objections that tiny homes decrease property values, increase traffic, and are not aesthetically appropriate for the City

FINDINGS OF FACT

- Findings of fact for rezoning cases are not required to be in writing. However, written findings of fact can be helpful to avoid arbitrary or politically motivated rezoning decisions and support the consistency requirement for rezonings to be consistent with the Comprehensive Plan.
- Other types of quasi-judicial decisions shall have written findings of fact.