



A C H I E V E   A N Y T H I N G

# Quasi-Judicial Procedure

City Code §§ 2-79 – 2-84

# General Overview



- Most quasi-judicial decisions **impact property rights**
- Proceedings are governed by **Chapter 2, Article III** of the Code of the City of North Port, Florida
- Used by **City Commission, Planning and Zoning Advisory Board, Zoning Board of Appeals**
- This local process provides **due process** to applicant – failure to follow can deprive applicant of due process

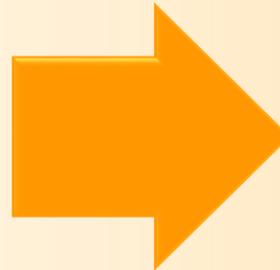
# General Overview



- 3 bases for appeal to court system:
  - Deprivation of due process
  - Lack of a fair and impartial decision maker
  - Lack of competent substantial evidence to support decision
- Board's counsel may interrupt proceedings to ensure compliance with process and preservation of record for appeal

# Quasi-Judicial Matters Defined

§ 2-82



# Quasi-Judicial Matters Include:

§ 2-82



Site-specific rezoning of land that impacts a limited number of persons

Applications for special exceptions

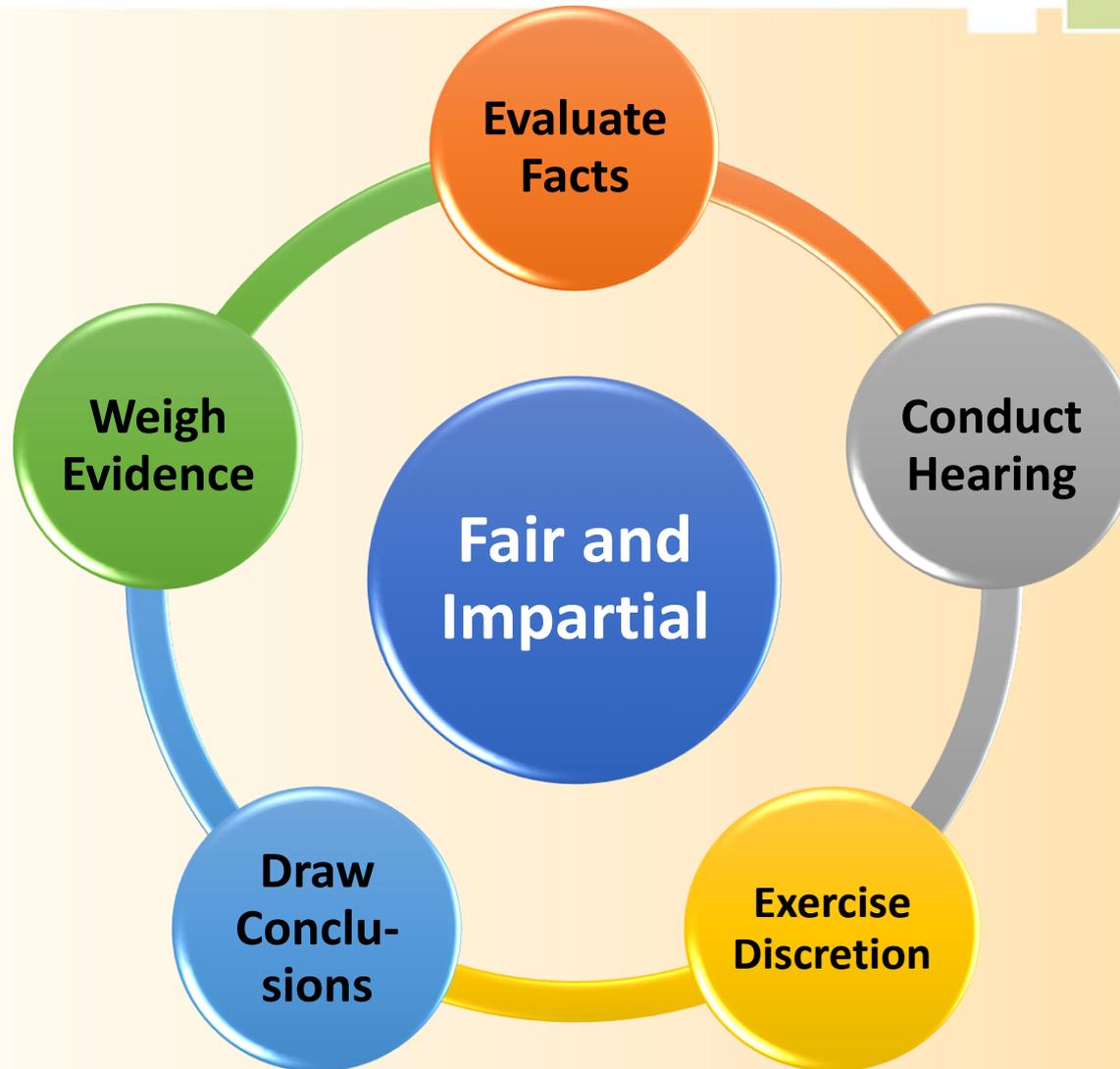
Applications for preliminary and final plats

Applications for variances from the ULDC

Appeals from an administrative determination of staff

Vacation of easements

# Role of the Quasi-Judicial Decision Maker



# Evidence - § 2-83(c)(1)



## MUST ALLOW

**All relevant  
evidence**

- Related to subject matter of application
- Showing compliance with City's regulations

## MAY EXCLUDE

**Irrelevant**

**Immaterial**

**Unduly repetitious**

# Hearsay - § 2-83(c)(2)



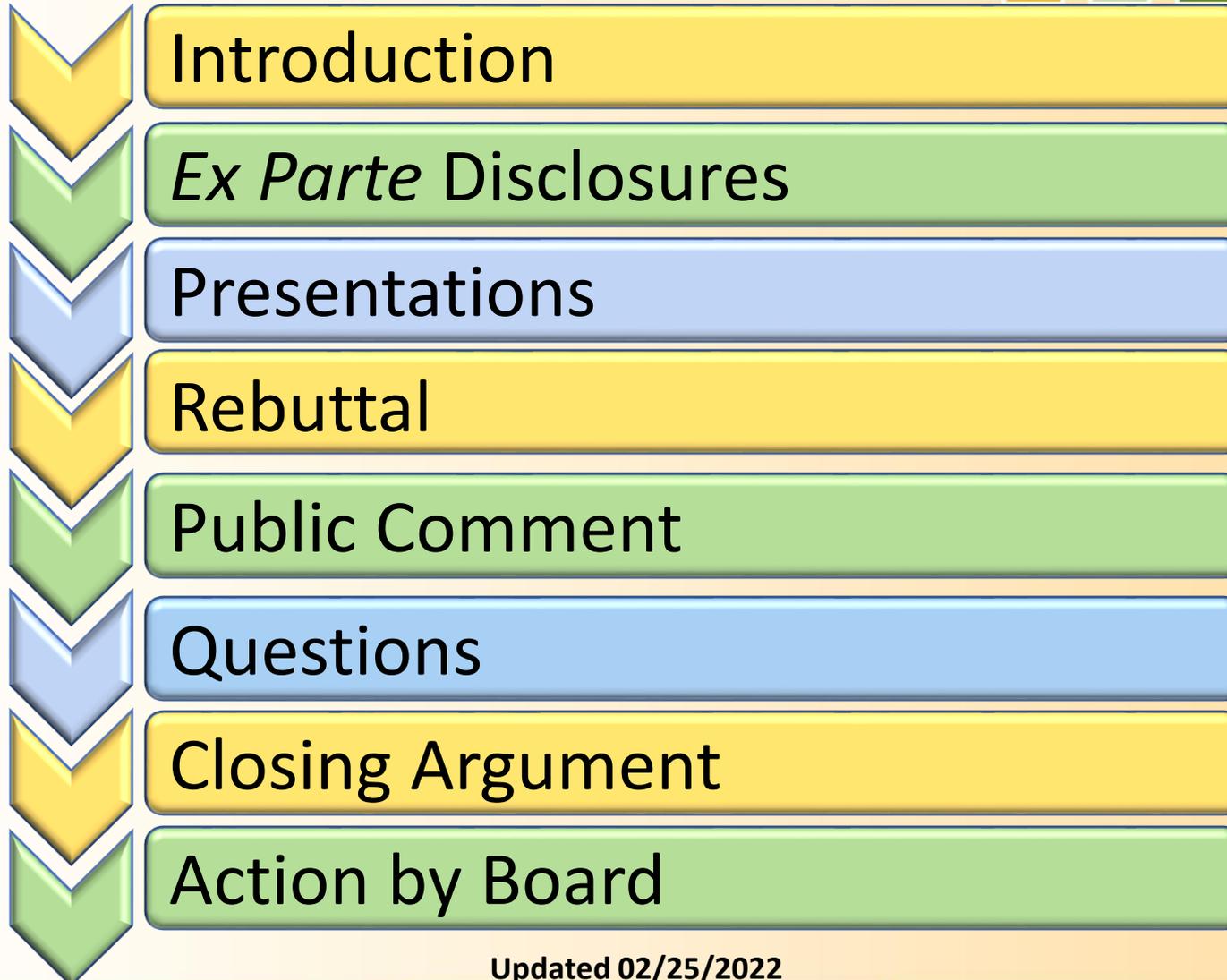
- Generally exclude or disregard
- May be accepted to supplement or explain direct evidence
- Only if it is not offered for the truth of the matter asserted
- Is not sufficient alone

# Evaluation of Evidence

- Decision must be supported by **competent substantial evidence**
- Evidence may be given different **weight** based on depth of experience and knowledge (*i.e.*, subject-matter expert vs. layperson)
- Consider the **credibility** of the evidence (*i.e.*, is it disputed, interest of the witness)

# Overview of Procedure

§ 2-83(a)



# Introduction

## § 2-83(a)(1)-(2)



### Introduction

- Chair calls and introduces case (or asks Clerk to do so)
- Clerk delivers oath

Everyone  
testifying

Attorneys

Public  
comment

# Ex Parte Disclosures

§ 2-83(a)(3), F.S. § 286.0115



## *Ex Parte* Disclosures

- Disclose subject of communications, investigations, site visits
- Disclose identity of person/group with whom communication took place

# Ex Parte Definition & Presumption

§§ 2-80, 2-84(a)



**ANY** verbal or written expression made to a Board member outside the presence of all interested parties regarding the merits of any matter on which action may be taken by this Board.

Presumed to be prejudicial

Unless disclosure procedure followed

# Ex Parte Disclosure

§ 2-84(b)



## What to Disclose on the Record

- **Verbal** – During the hearing, announce the substance of all discussions, identity of all participating
- **Written** – Prior to the hearing, forward to the City Clerk; otherwise, read in full during hearing
- **Investigations and site visits** – Announce during the hearing



## Considerations

- The **role** of the quasi-judicial board does not include investigating
- Developing facts/information **outside of hearing**
- **Complicates proceedings** - Persons who have opinions contrary to those expressed *ex parte* need to be given a reasonable opportunity to refuse or respond



- Consider **not engaging** in *ex parte* communications to the extent possible. This avoids:
  - Complications in the **hearing process**
  - An argument that a board member is not – or appears not to be - **fair and impartial**
- Applicants and residents have the **best opportunity** to present their position during the public hearing



## Presentations

- Order:
  - (1) Applicant
  - (2) City staff
  - (3) Aggrieved or adversely affected person
- Time limit: 20 minutes

# Aggrieved or Adversely Affected Person



- **Definition**

- Generally, a person that may suffer a negative effect that is greater than the community at large - § 2-80

- **Notice**

- Deadline – 5:00 p.m., 8 days before hearing
- Only one notice required for all hearings

# Determination § 2-81



- **Board review**

- Upon the request of a party, the board must determine whether the notice complies with the Code requirements
- May only consider the contents of the notice
- If Board finds **compliance**, the person may proceed as a party
- If Board finds **no compliance**:
  - The person may participate only in public comment, like any other member of the public
  - The decision relates only to that Board's hearing and not to any other hearing on the application

# Rebuttal

§ 2-83(a)(4)b



## Rebuttal

- Order:
  - (1) Applicant
  - (2) City staff
  - (3) Aggrieved or adversely affected person
- Time limit: 5 minutes
- Include: Rebuttal testimony and evidence, cross-examination, impeachment

# Public Comment

§§ 2-83(a)(4)c



## Public Comment

- Speakers – must take an oath
- Time limits - may be extended by vote if all speakers are allowed the same time

# Questions by the Board

§§ 2-83(a)(4)d



## Questions

The presider and board members may ask questions of any party, witness, or person providing public comment

# Closing Argument

§ 2-83(a)(4)e



## Closing Argument

- Order:
  - (1) Aggrieved or adversely affected person
  - (2) City staff
  - (3) Applicant
- Time limit: 5 minutes

# Action by the Board

§§ 2-83(a)(5)

- At conclusion of presentation of evidence and testimony, the public hearing will be closed – no additional evidence or questions unless the board votes to reopen the public hearing
- Presider entertains any motions
- Board deliberates and votes on motions

# Motion and Vote

## § 2-83(a)(5)



### Considerations

- What code provisions apply
- What are the facts and evidence presented
- Does the request comply with the code

### Standard for Determination

Competent and substantial evidence

### Motion Should Include

1. Finding of facts (or lack of facts)
2. Approval or denial of application



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Questions?