

98.3.13 - Quasi-Judicial Procedures.

- A. **Intent.** The intent of this section is to establish procedures to ensure procedural due process and maintain citizen access to the local government decision-making process for the review of development orders and appeals of those orders that require quasi-judicial hearings. These procedures shall be applied and interpreted in a manner recognizing both the legislative and judicial aspects of the local government decision-making process in quasi-judicial hearings.
- B. **Applicability.** These procedures shall apply to all applications in which the city council or the board of adjustments acts in a quasi-judicial capacity for final decisions or appeals of final decisions as to conditional uses, variances and rezonings, or where the planning board hears applications to make such recommendations to the decision-making board. These procedures do not apply to administrative decisions made by city staff, except upon the appeal of the administrative decision to the board of adjustments or the city council.
- C. **Definitions.** The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:
 - 1. Applicant shall mean the owner of record, the owner's agent, or any person with a legal or equitable interest in the property for which an application for a development order or appeal thereof has been made and which is subject to quasi-judicial proceedings, and shall mean the staff when the application is initiated by the city.
 - 2. Competent substantial evidence shall mean testimony or other evidence based on personal observation, or fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issue to be decided. Competent substantial evidence is evidence a reasonable mind could accept as adequate to support a conclusion.
 - 3. Decision-making body shall mean the city council or the board of adjustments, as the case may be, that makes a decision on an application or decides the appeal.
 - 4. Expert shall mean a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.
 - 5. Intervener shall mean a person whose interests in the proceeding are adversely affected in a manner greater than those of the general public. The decision making body, or the planning board as applicable, shall determine who shall be permitted to participate as an intervenor in the hearing, but such permission shall not determine the person's legal rights for purposes of judicial proceedings.
 - 6. Material fact shall mean a fact 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.
 - 7. Participants shall mean members of the general public, other than the applicant, including experts and representatives of local governments and governmental agencies, who offer testimony at a quasi-judicial hearing for the purpose of being heard on an application.
 - 8. Party shall mean the applicant, the city staff, or any person recognized by the decision-making body as a qualified intervenor.
 - 9. Relevant evidence shall mean evidence which tends to prove or disprove a fact that is material to the determination of the application.
- D. **General procedures.**

1. Each party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any relevant matter (subject to the rules contained herein), and to rebut evidence.
2. Staff shall have the responsibility of presenting the case on behalf of the city. The staff report on the application shall be made available to the applicant and the decision-making body no later than five days prior to the quasi-judicial hearing on the application.
3. Official file. All written communication received by decision-making body or staff concerning an application, the staff report on the application, any petitions or other submissions from the public, and all other documents pertaining to the application upon receipt shall be filed in the official file for the application, which shall be maintained by staff. The comprehensive plan and the city code of ordinances shall be deemed to be part of the official file. The official file shall be available for inspection during normal business hours.
4. The printed agenda for the meeting at which the quasi-judicial hearing is scheduled to take place shall identify the hearing as quasi-judicial and indicate where copies of the procedures that apply may be obtained.

E. **Hearing procedures.** The hearing shall, to the extent possible, be conducted as follows:

1. The chair or city attorney shall read a statement at the beginning of the quasi-judicial hearing portion of the agenda, which shall outline the procedure to be followed. A copy of the procedures shall be made available at the hearing.
2. The applicant, staff, and all participants requesting to present evidence at the hearing shall be collectively sworn by oath or affirmation.
3. The applicant may waive its right to an evidentiary hearing if it agrees with the staff recommendation and no one from the audience wishes to speak for or against the application. The decision-making body may then vote on the item, based upon the staff report and any other materials entered by staff from the official file into the record of the hearing.
4. All members of the decision-making body or the planning board shall make ex-parte disclosures.
5. If there is an evidentiary hearing, the order of the presentation shall be as follows, unless the chair agrees to a different order, taking proper consideration of fairness and due process:
 - a. The applicant shall make its presentation, including offering any exhibits from the official file, and introduce any witnesses as it desires.
 - b. Staff shall present a brief synopsis of the application; introduce any appropriate additional exhibits from the official file which have not already been transmitted to the decision-making body with the agenda materials, as staff desires; summarize issues; and make a recommendation on the application. Staff shall also introduce any witnesses that it wishes to provide testimony at the hearing.
 - c. Participants in opposition to or support of the application shall make their presentations in the order as determined by the chair.
 - d. Staff may cross-examine any witnesses and respond to any testimony presented.
 - e. The applicant may cross-examine any witnesses and respond to any testimony presented.
 - f. The chair may choose to allow participants to respond to any testimony if the chair deems the response to be necessary to ensure fairness and due process.
 - g. Members of the decision-making body or the planning board as applicable, through the chair, may ask any questions of the staff, applicant and participants.
 - h. Final argument may be made by the staff, related solely to the evidence in the record.

- i. Final argument may be made by the applicant, related solely to evidence in the record.
 - j. An intervener who is accepted as an intervenor by the decision-making body or the planning board, as applicable, may make a presentation, conduct cross-examination and make final arguments in the order as decided by the chair.
6. The chair shall keep order, and without requiring an objection, may direct a party conducting the cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined; is unduly repetitious is not relevant; or is beyond the scope of the testimony by the individual being cross-examined. If the party conducting the cross-examination continuously violates directions from the chair to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the chair may terminate the cross-examination.
 7. After the presentations, and at the conclusion of any continuances, the decision-making body or the planning board, as applicable, shall deliberate on the application or appeal, as the case may be. Once deliberations are begun, no further presentations or testimony shall be permitted except in the sole discretion of the decision-making body or the planning board, as applicable. The decision-making body's decisions must be based upon competent substantial evidence in the record.
 8. The decision-making body or the planning board may, on its own motion or at the request of any person, continue the hearing to a fixed date, time, and place. The applicant shall have the right to one continuance; however, all subsequent continuances shall be granted at the sole discretion of the decision-making body.
 9. The applicant may withdraw an application by requesting such withdrawal in writing. If an application is withdrawn, that application or any similar application for the same site shall not be accepted for review for a period of twelve months from the date of such withdrawal.

F. Rules of evidence.

1. The decision-making body or the planning board shall not be bound by the strict rules of evidence, or limited only to consideration of evidence which would be admissible in a court of law.
2. The chair may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
3. The chair will determine the relevancy of evidence, with the assistance of the city attorney.
4. Matters relating to an application's consistency with the city comprehensive plan or land development code will be presumed to be relevant and material.
5. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a court.
6. Documentary evidence may be presented in the form of a copy of the original, if available. A copy shall be made available to the decision-making body and to the staff no later than two days prior to the hearing on the application. Upon request, the applicant and staff shall be given an opportunity to compare the copy with the original. Oversized exhibits shall be copied and reduced for convenient record storage.
7. Only the applicant, intervener, staff and the decision-making body or planning board shall be entitled to conduct cross-examination when testimony is given or documents are made a part of the record.
8. The city attorney shall represent the decision-making body or planning board and advise it as to the procedures to be followed and the propriety, relevancy and admissibility of evidence presented at the hearing.

9. The decision-making body or planning board shall take judicial notice of all state and local laws, ordinances and regulations and may take judicial notice of such other matters as are generally recognized by the courts of the State of Florida.
- G. **Final decision by the decision-making body.** The decision-making body shall reach a decision, or the planning board shall make its recommendation, without unreasonable or unnecessary delay. The decision shall be in writing and dated as of the date issued. The community development director shall provide the applicant notification of the decision by certified mail.
- H. **The record.** All evidence admitted into the record at the hearing, and the adopted development order of the decision-making body shall be maintained by the city clerk in a hearing file for a period of at least 45 days from issuance of the decision.

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