

North Port

FLORIDA

Updated 12/28/2023



Quasi-Judicial Training

City Code §§ 2-79 – 2-84

What Is Quasi-Judicial?

Updated 12/28/2023



General Overview

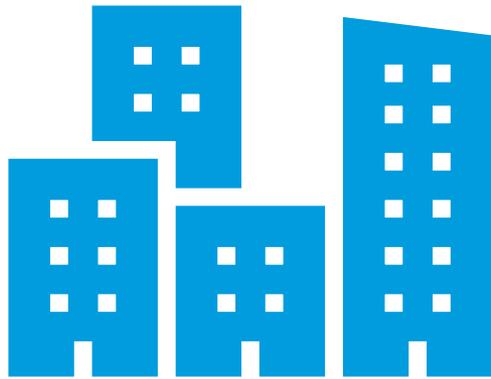
- Most quasi-judicial decisions impact property rights
- Proceedings are governed by Chapter 2, Article III of the Code of the City of North Port, Florida
- Used by City Commission, Planning and Zoning Advisory Board, Zoning Board of Appeals
- This local process provides due process to applicant – failure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

Quasi-Judicial Matters Defined

§ 2-82

Decision involving
APPLICATION of
City regulations -
as applied to
**SPECIFIC
PROPERTY**

Distinct from the
CREATION of
general City
regulations, law,
or policy

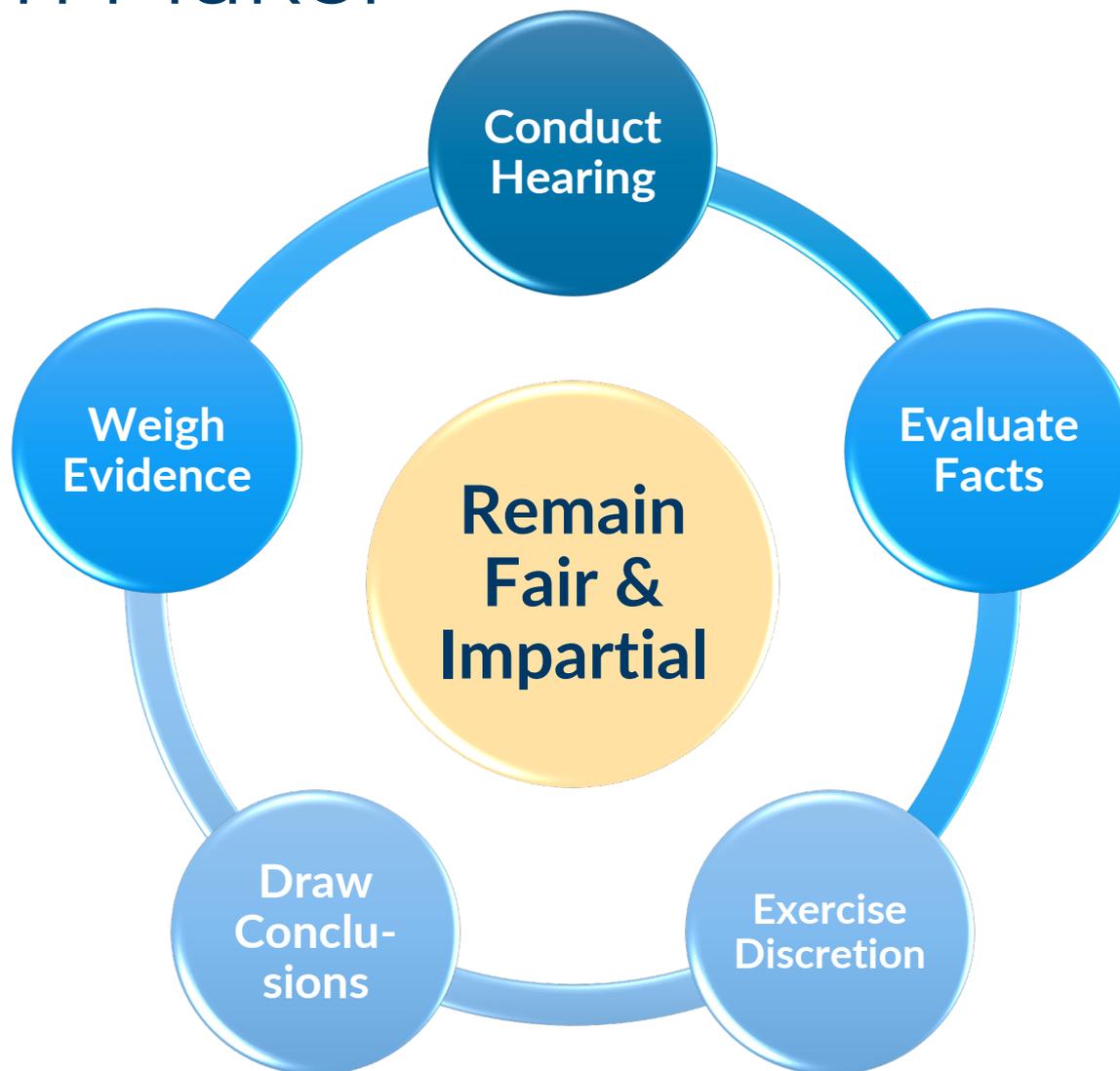


Quasi-Judicial Matters Include

§ 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



Updated 12/28/2023

North Port Quasi-Judicial Procedures

Updated 12/28/2023



Overview of Procedure

§ 2-83(a)

- Introduction
- *Ex Parte* Disclosures
- Public Hearing
 - Presentations
 - Rebuttals
 - Public Comments
 - Questions by Board
 - Closing Argument
- Action by Board

Step 1 - Introduction of Case

§ 2-83(a)(1)-(2)

- Chair calls and introduces case (or asks Clerk to do so)
- Clerk delivers the oath
 - All persons testifying
 - Includes attorneys and public commenters





Step 2 - *Ex Parte* Disclosures

§§ 2-83(a)(3) and 2-84; F.S. § 286.0115

- **Definition**

- 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. (§ 2-80)

- **Presumed to be prejudicial**

- Unless disclosure procedure followed (§ 2-84(a))



Content of Disclosures

- **Verbal** – During the hearing, announce the substance of all discussions and the identity of all participants
- **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 - Persons who have opinions contrary to those expressed *ex parte* need to be given a reasonable opportunity to refuse or respond

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Ex Parte
**Communication
Is Not Illegal,
But Can Create
Legal Issues**

- Consider not engaging in *ex parte* communications to the extent possible. This avoids potential legal challenges:
 - An argument that a party was denied due process in cross-examining witnesses or refuting evidence
 - 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

Step 3 - Presentations

§ 2-83(a)(4)a

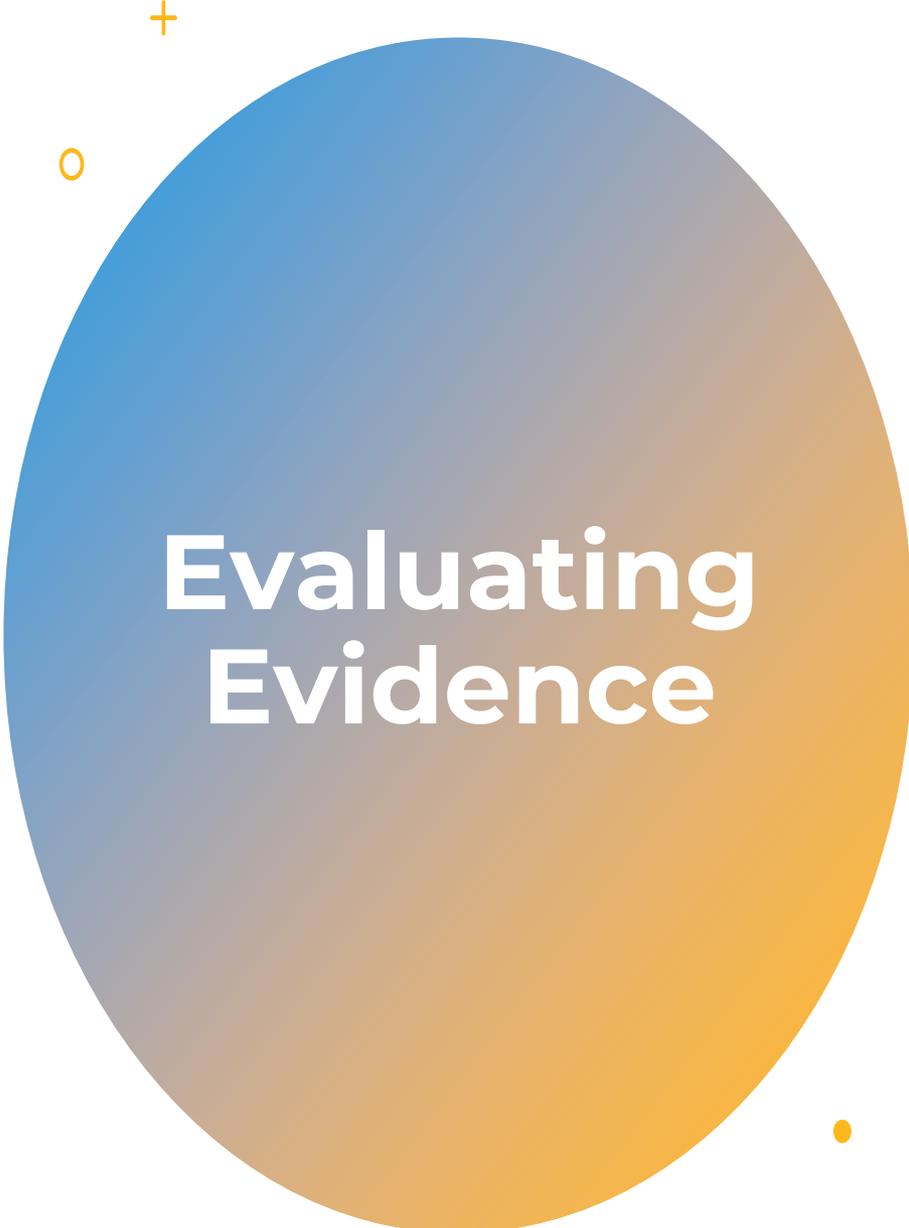
- Order of Presentations:
 - (1) Applicant
 - (2) City staff
 - (3) Aggrieved or adversely affected person
- Time limit: 20 minutes



Evaluating Evidence

- Must allow all relevant evidence
 - Related to subject matter of application
 - Showing compliance with City regulations
- May exclude:
 - Irrelevant evidence
 - Immaterial evidence
 - Unduly repetitious evidence

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



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Aggrieved/ Adversely Affected Person

§ 2-81



- **Definition**
 - Generally, a person that may suffer a negative effect that is greater than the community at large - § 2-80
- **Written Notice Required**
 - Deadline – 5:00 p.m., 8 days before hearing
 - Only one notice required for all hearings
- If notice is properly filed, person has rights as an aggrieved party

Determination of Aggrieved Party

§ 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
- **Board finding**
 - 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

Step 4 - Rebuttals

§ 2-83(a)(4)b

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



Step 5 - Public Comment

§ 2-83(a)(4)c

- Speakers – must take an oath
- Time limits - may be extended by Board vote
 - BUT all speakers must be allowed the same amount of time



Step 6 – Board’s Questions

§ 2-83(a)(4)d

- The president and board members may ask questions of any party, witness, or person providing public comment
- Consider directing each question to a specific party
 - If directing a question to a specific person, it denies the party the opportunity which witness/ representative is best to answer
 - If asking the question generally for any/all parties to answer, it could prolong the proceedings





Step 7 - Closing Arguments

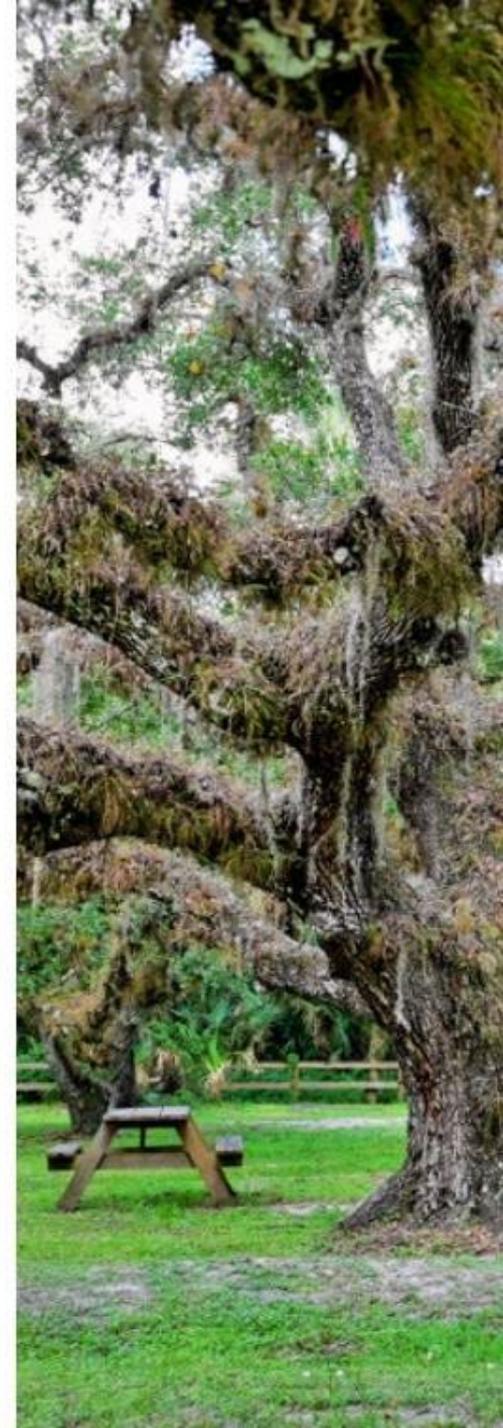
§ 2-83(a)(4)e

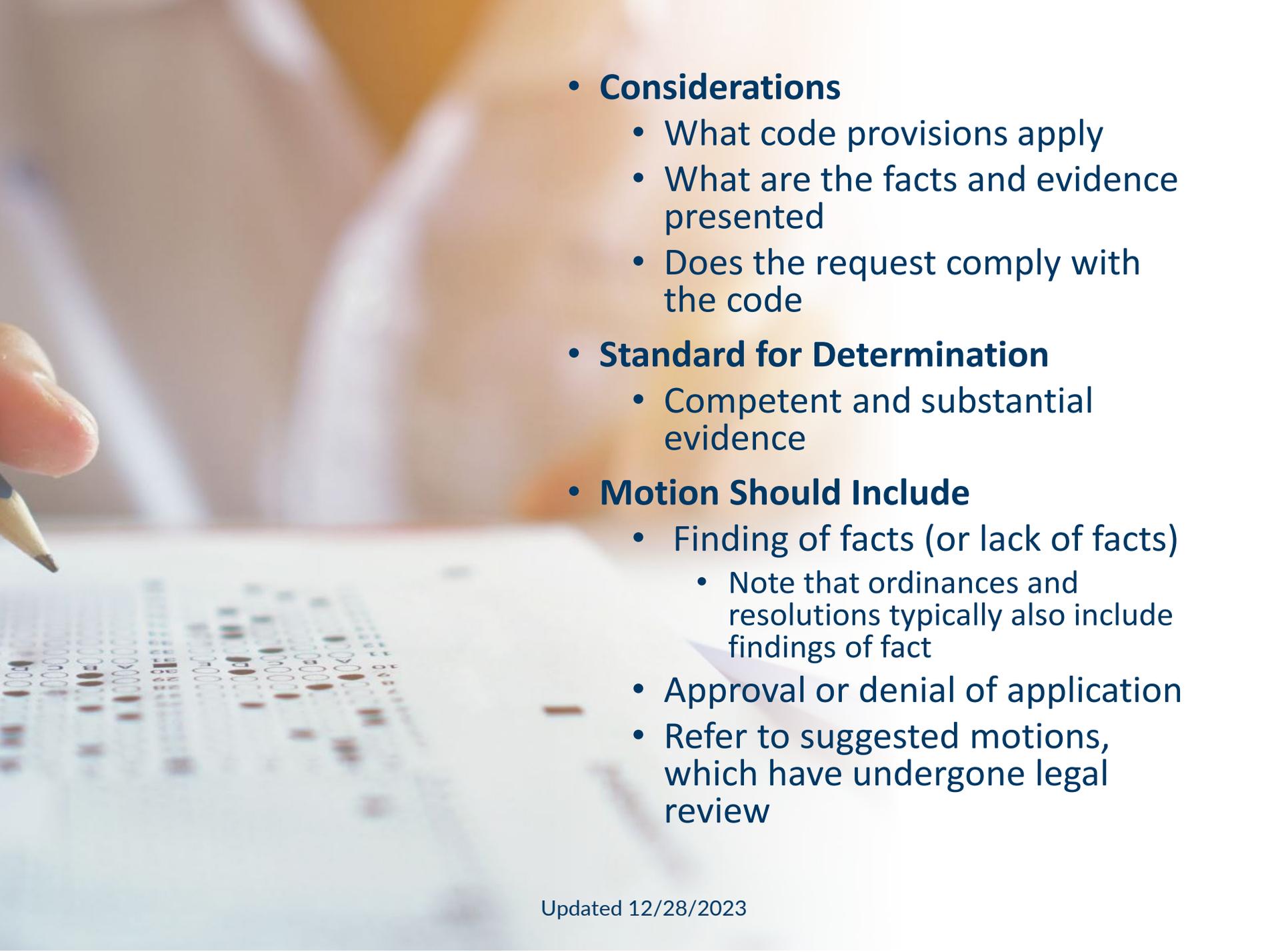
- Order of Closing Arguments:
 - (1) Aggrieved or adversely affected person
 - (2) City staff
 - (3) Applicant
- Time limit: 5 minutes

Step 8 - Board Action

§ 2-83(a)(5)

- After board questions, the public hearing will be closed
 - No additional evidence or questions unless the board votes to reopen the public hearing
- Mayor or board chair entertains any motions
- Board deliberates and votes on motions



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- A hand holding a pencil is visible on the left side of the image, positioned over a document with a grid pattern. The background is blurred, showing a person's hands and a document. The text is overlaid on the right side of the image.
- **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**
 - Finding of facts (or lack of facts)
 - Note that ordinances and resolutions typically also include findings of fact
 - Approval or denial of application
 - Refer to suggested motions, which have undergone legal review

Appeals

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Bases for Appeal

- **Order of Denial**
 - If application is denied, the Board's counsel will draft an order and serve it on all parties
 - Parties have 30 days to file an appeal in the court system
- 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

Role of Board's Legal Counsel

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- Each board sitting in a quasi-judicial capacity will have legal counsel present
- The board's counsel is present to advise the board, not to provide testimony or advise City staff
 - Procedural questions/issues
 - General legal questions that do not involve applying City regulations to the project that is before the board
 - Typically, if City staff needs legal counsel specific to their status as a party in a quasi-judicial hearing, the City Attorney will retain conflict counsel to represent staff
 - The City Attorney's Office reviews all official documents of the Board, including ordinances and resolutions
 - The City Attorney's Office drafts/reviews suggested quasi-judicial motions
- The board's counsel may interrupt quasi-judicial proceedings to ensure compliance with process and preservation of record for appeal



Questions?