



Quasi-Judicial Training

City Code §§ 2-79 – 2-84

What Is Quasi-Judicial?



General Overview

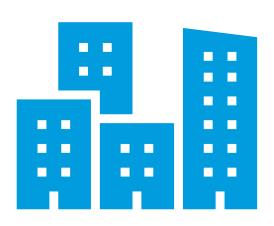
- Most quasi-judicial decisions impact property rights
- Proceedings are governed by <u>Chapter 2, Article III</u> of the Code of the City of North Port, Florida
- Used by City Commission, Planning and Zoning Advisory Board, Zoning Board of Appeals
- This local process provides <u>due</u>
 <u>process</u> 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

CREATION of general City regulations, law, or policy

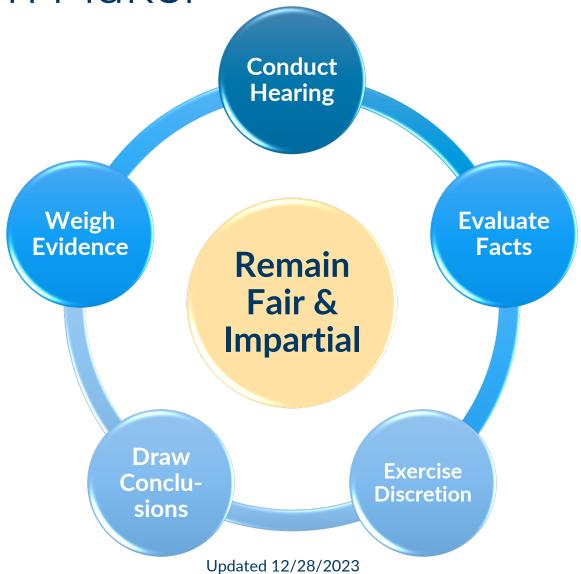


Quasi-Judicial Matters Include

§ 2-82

- <u>Site-specific rezoning</u> of land that impacts a limited number of persons
- Applications for special exceptions
- Applications for preliminary and final plats
- Applications for <u>variances</u> from the ULDC
- Appeals from an <u>administrative</u> <u>determination</u> of staff
- Vacation of easements

Role of the Quasi-Judicial Decision Maker



North Port Quasi-Judicial Procedures



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))



- •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



- •The <u>role</u> 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



- 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 crossexamining 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 <u>credibility</u> 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 <u>no compliance</u>, 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 presider 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





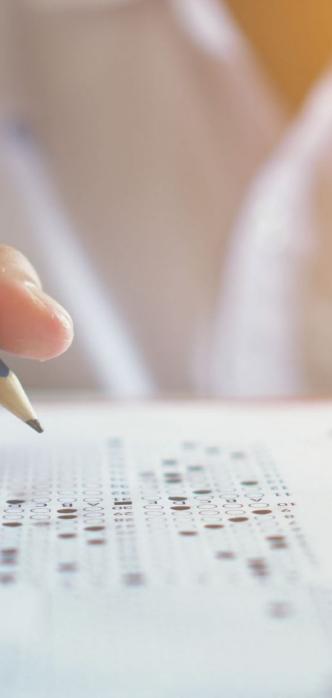
Step 7 - Closing Arguments § 2-83(a)(4)e

- 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





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

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 <u>due process</u>
 - Lack of a fair and impartial decision maker
 - Lack of competent substantial evidence to support decision

Role of Board's Legal Counsel



- 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

