



MICANOPI, SEMINOLE CHIEF

# Town of Micanopy

## Town Commission

### Minutes Special Quasi-Judicial Training

Tuesday • May 8, 2018 • 6:00pm

1. Call to Order: 6:00pm
2. Invocation and Pledge of Allegiance to Flag
3. Roll Call
  - Commissioners Attending:
  - Joseph Aufmuth, Mayor Pro Tem Present
  - Troy Blakely Present
  - Virginia Mance Present
  - Timothy Parker, Mayor Present
  - Mike Roberts Present
  - Fro Warren, Chair P&HPB Present
  - Ann Baird Present
  - Tom Brady Present
  - David Massey Present (arriving 6:08)
  - Grace Fuller Absent
  
  - Debbie Gonano, Town Administrator Present
  - Patty Polk, Deputy Town Clerk Present
  - Scott Walker, Town Attorney Present
  - Courtney Johnson, Town Attorney Present
4. Agenda Approval
  - A) Agenda Approval  
***Motion made and second (Aufmuth/Mance) to approve the agenda as submitted; passed 5-0***
5. Quasi Judicial Definition: *“The action taken and discretion exercised by public administrative agencies or bodies that are obliged to investigate or ascertain facts and draw conclusions from them as the foundation for official actions.”*

#### **Quasi-Judicial Proceedings:**

Local government land use decisions are deemed quasi-judicial when the action involves policy application rather than policy making. Required when a local government applies an ordinance, rule, law, official procedure, etc. to a specific application or controversy. Analogous to judicial hearing, but with fewer formalities and procedural requirements (informal trial).

#### **Due Process:**

Certain standard of basic fairness and impartiality must be adhered to in order to afford parties due process. A quasi-judicial decision based upon the record is not conclusive if minimal standards of due process are denied. Generally meets basic due process if:

- 1) Notice; and
- 2) Opportunity to be heard

Must be able to present evidence, cross-examine witnesses and be informed of all facts upon which the Board acts. To an extent, this applies to non-party participants, but Florida law does not require the participants at the hearing be allowed to cross-examine witnesses.

**Requirements per Town's Land Development Code (LDC):**

LDC Article 10, Section 10.10 Quasi-Judicial Hearings

- 1) The Board or Commission shall determine whether it has jurisdiction over the matter.
- 2) Members of the Board or Commission shall, if necessary, state whether they have a conflict of interest or must otherwise disqualify themselves from hearing the case.
- 3) Members of the Board or Commission shall disclose and place on the record any ex-parte contacts relating to the matter before the Board or Commission.
- 4) Introduction of the Petition by the Town.
- 5) Presentation of Applicant's Case.
- 6) Presentation of Staff's Case.
- 7) Presentation of Affected Party's Case.
- 8) Rebuttal by Applicant.
- 9) Rebuttal by Staff.
- 10) Rebuttal by Affected Parties.
- 11) Public Input.
- 12) Deliberation and Vote of Board or Commission.
- 13) Preparation of Final Order.
- 14) Approval of Final Order.

**Requirements per Florida Case Law:**

*Burden of Proof:*

Applicant has initial burden of proof during quasi-judicial proceeding to prove all of the necessary components of the requisite application. The burden then shifts to the Board or Commission to justify denial

**Evidence – Competent, Substantial Evidence**

*Substantial evidence:* Evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. Such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.

*Competent:* The evidence relied upon to sustain the ultimate finding should be sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.

Substantial evidence should also be competent.

Competent, substantial evidence is tantamount to legally sufficient evidence.

**LDC Article 10, Section 10.10.10**

Testimony or other evidence that is irrelevant or immaterial to the issue to be decided by the Board or Commission is inadmissible. The Chair shall make rulings on objections to the relevance and materiality of the examination. A Commission member, party, or staff member may raise an objection to the possibly irrelevant and immaterial testimony or evidence. During the presentation by the opponents or proponents of an issue before the Board or Commission, no one may present testimony or evidence which is unduly cumulative or repetitious of previously presented testimony or evidence by a fellow opponent or proponent.

**Requirements per Florida Case Law:**

*Witnesses:*

Due process and our procedure require witnesses have an opportunity to testify. However, "the objections of a large number of residents of the affected neighborhood are not a sound basis for the denial of a permit." Your decision must be exercised on the basis of the facts adduced; numerous objections by adjoining landowners may not properly be given even a cumulative effect. "A mere poll of the neighboring landowners does not serve to assist the Board in determining whether the exception applied for is consistent with the public convenience or welfare or whether it will tend to devalue the neighboring property."

*Citizen Testimony:*

It is permissible, and may constitute competent substantial evidence as long as it is fact-based testimony. This will be determined on a case-by-case basis given the context of the hearing. Testimony of a professional planning staff for a municipality has been recognized as substantial competent evidence; however, there must be facts to support the testimony.

**Requirements per Florida Case Law:**

*Form of Final Decision:*

Written findings are not required as "...long as the court can locate competent substantial evidence consistent with the decision (and, of course, conclude the local government applied the correct law and did not deprive the petitioner of due process)."

However, our advice is a written final decision as the best way to achieve protection of our interest and reduce the need for litigation. Or, if litigation is required, to assist.

*Findings and Order:*

Unless the Board or Commission and the developer agree to an extension, the Board or Commission shall, within thirty-five days of the hearing, render an order including:

- 1) A statement of the applicable criteria and standards against which the proposal was tested.
- 2) Findings of facts which established compliance or noncompliance with the applicable criteria and standards of this Code.
- 3) The reasons for a conclusion to approve, conditionally approve, or deny.

**Ex-Parte Communications:**

**Ex-parte Communication to be Avoided:**

Inherently improper and anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable. Upon the aggrieved party's proof that an ex-parte contact occurred, its effect is presumed to be prejudicial unless the defendant proves the contrary by competent evidence.

Upon a quasi-judicial officer receiving an ex parte contact, a presumption arises, pursuant to Section 90.304, that the contact was prejudicial. The aggrieved party will be entitled to a new and complete hearing before the Commission unless the defendant can prove the communication was not prejudicial.

**Statutory Provisions:**

Florida Statute 286.0115(1)(a) allows a municipality to adopt an ordinance or resolution removing the presumption of prejudice from ex parte communication with local public officials by establishing a process to disclose ex parte communications with such officials.

*Presumption of Prejudice:*

Town provides for such a procedure to remove the presumption of prejudice:

- 1) The substance of any ex parte communication with a Commissioner which relates to a quasi-judicial action pending before the Commission is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before the final action on the matter.
- 2) A Commissioner may read a written communication from any person. A written communication relating to quasi-judicial action pending before the Commission shall not be presumed prejudicial to the action. Such written communication shall be made a part of the record before final action on the matter.
- 3) Commissioners may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before the Commission. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

**When Should Disclosure Occur:**

Disclosure must be made before or during the public meeting at which a vote is taken on such matters so that the persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication.

**Difficult to Avoid:**

In the context of local government, it is difficult to limit ex parte communications; however every effort should be taken to avoid such communications where possible, or if not possible or practical, full disclosure on the record is necessary.

**Recommendations:**

An essential component to due process is an impartial decision maker that shall base its decision on the evidence presented at the hearing.

If the procedures are not followed and ex parte communication is allowed, that communication will be presumptively prejudicial.

Recommendation of Town Attorney’s office: All members of this Board refrain from communicating with the public regarding any pending application.

**Challenges to Impartiality:**

A party to a hearing may challenge the impartiality of any member. The challenge must state by affidavit facts relating to a bias, prejudgment personal interest, or other facts from which the challenger has concluded that the decision-maker cannot participate in an impartial manner. Except for good cause shown, the challenge shall be provided to the Town no less than 48 hours preceding the time set for the hearing. The challenge shall be incorporated into the record.

**Effect of Disqualification:**

A disqualified member of a hearing body shall not be counted for purposes of forming a quorum. A member who takes a position on the issue based upon personal interest may do so only by abstaining from voting on the proposal, vacating the seat on the hearing body, physically joining the audience, and making full disclosure of their status and position at the time of addressing the hearing body. If the hearing body is reduced to less than a quorum by abstentions or disqualifications, all members present after stating their reasons for abstention or disqualification shall be re-qualified and proceed to resolve the issues. A member absent during the presentation of evidence in a hearing may not participate in the deliberations or final decision regarding the matter of the hearing unless the member has reviewed the evidence received.

**Standard of Review:**

*Writ of Certiorari:* A review by an appellate court of the record of an inferior tribunal in a quasi-judicial proceeding. Following an adverse decision, an applicant is entitled as a matter of right to appeal to circuit court on a Writ of Certiorari. Court must review and determine whether the decision was based on competent, substantial evidence.

*First Tier Review - Limited to Record:*

Court limited to three questions:

- 1) Whether procedural due process is accorded,
- 2) Whether the essential requirements of the law have been observed, and
- 3) Whether the administrative finding and judgment are supported by competent, substantial evidence

*Second Tier Review:*

District Court is limited to two issues:

- 1) Whether the circuit court afforded due process; and
- 2) Whether the circuit court applied the correct law.

6. Adjourn 7:20pm

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**MINUTES APPROVED:**

As submitted \_\_\_\_\_ as amended \_\_\_\_\_ at Town Commission Meeting \_\_\_\_\_

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Tim Parker, Mayor

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Debbie Gonano, Town Clerk