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Quasi-Judicial Hearings

Presented by:

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Elected Official Training



Quasi-Judicial Decisions

In 1993, the Florida Supreme Court made clear that certain proceedings are sufficiently “judicial” in character to warrant treatment as “quasi-judicial” proceedings.



Board of County Commissioners v. Snyder,
627 So.2d 469 (Fla. 1993).



Quasi-Judicial v. Legislative Decisions

1. Legislative decision making involves the adoption of laws or policies that will be applied *community-wide*. For example, adoption of changes within the City's Zoning Code.
2. Quasi-judicial decision making involves the *application of existing laws/policies* to a *particular property* or person. Land use decisions that are made based upon the evidence presented.



Quasi-Judicial Decision Making

Typically applies to: site plan approvals, special exceptions, rezoning applications, variances, code enforcement, special magistrates, hearing examiners, conditional uses, other land use approvals.



3 Quasi-Judicial Hearing Standards

1. Has *Due Process* Been Afforded to the Parties?
2. Was the Decision Based Upon *Competent Substantial Evidence*?
3. Have the *Essential Requirements of Law* Been Followed?



3 Quasi-Judicial Hearing Standards

- 1. Due Process*
- 2. Decision Based On Competent Substantial Evidence*
- 3. Following the Essential Requirements of Law*

A violation of any 1 of the 3 elements will result in a reviewing Court remanding the matter back to the Board.



Due Process = Fairness

1. Notice of the Date, Time Location of the Public Hearing Must be Provided.
2. Meaningful Right to Be Heard.
3. Right to Present Evidence.
4. Right to Cross Examine Witnesses.





Due Process = Fairness

5. Right to Consistent Treatment.
6. Right to Have Established Procedures Followed.
7. Right to Know All Factors that Contribute to the Decision Making. [i.e., ex parte, site visits, etc.]





So what is “ex parte”?



- “Ex parte communication” means any communication “on behalf of or involving one party to a legal matter” that is “conducted in the absence of or without notice to the other party.”



Ex Parte Communications/Experiences

- Caselaw provides there is a presumption of prejudice.
- Fla. Stat. § 286.0115 modifies the presumption and allows cities to adopt an ordinance/resolution removing the presumption if communication and/or experience is disclosed and made part of the record.
- Disclosure must include : the subject of communication and identity of the person, group, or entity; written communications; site visits; and expert opinions.
- Individuals with contrary positions must have opportunity to respond/refute the communication/experience.



Best Practices

- All Ex Parte Must be Fully Disclosed to Avoid Due Process Issues. Disclose at the Beginning of Each Hearing and After Any Continuances.
- If you Have Not Engaged in Anything, Then There is Nothing To Disclose!
- All Unsolicited Email/ Written Communications can be Included In the Record by the City Clerk.
- Best Response (s) to Interested Citizen Is a “Thank You” and Invitation to Participate in the QJ Hearing with the Entire Commission at a Specific Date/Time.



There is No Such Thing As Too Much Due Process

what are other
words for
due process?



equity, due process of law,
justice, legality, mandate,
right, honesty, authority,
truth, law





Due Process is the Low Hanging Fruit

- Due Process Challenges are the Easiest to Raise on Appeal.
- How participants are treated, the time they are allocated, and how fair you are to the parties - are all under the Board's control.
- Balance Everyone's Rights: the applicant, participants, the opposition, and the public.
- Best Practice: Have CLEARLY defined hearing procedures in your Codes to avoid having to figure it out at the hearing on the fly!





Competent Substantial Evidence

“We have used the term ‘competent substantial evidence’ advisedly. Substantial evidence has been described as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. We have stated it to be such relevant evidence as a reasonable mind would accept as adequate to support a conclusion.”

DeGroot v. Sheffield, 95 So.2d 912, 916 (Fla. 1957)



Competency of Evidence

- Evidence that is relevant, material and reasonable.
- Formal rules of evidence do not apply, they are relaxed.
- Witnesses are subject to quasi-trial treatment and are subject to cross examination.
- Generally, witnesses must be sworn in.
- Hearsay testimony is admissible, but insufficient on its own to support a decision.



Competent Substantial Evidence

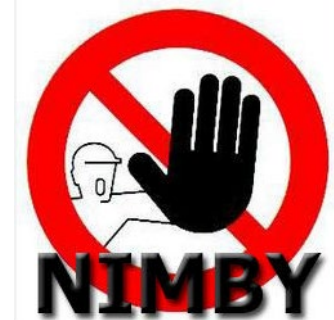
3 General Categories of Testimony:

1. Comments and opinions of professional staff;
2. Expert Testimony; and
3. Fact-based testimony of neighbors and lay people.



Not Competent Substantial Evidence

- Statements of public support/opposition without facts is NOT competent substantial evidence.
(i.e., NIMBY)
- Petitions.
- Not a popularity contest.



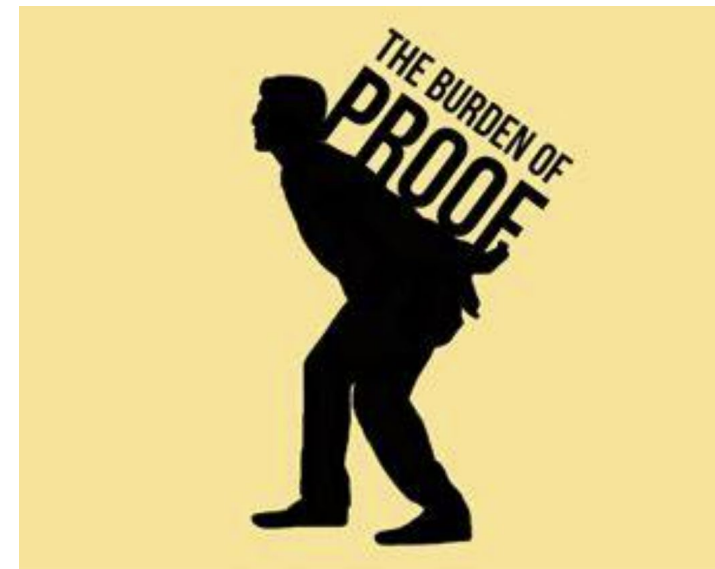
Competent Substantial Evidence

- The Quasi-Judicial Board gets to weigh and evaluate relevant evidence.
- If there is competing evidence, the Board gets to decide which evidence it believes more probable.
- Reviewing Courts are not permitted to second guess the Quasi-judicial Board's decision.
- Just need a *scintilla* of evidence!



Initial Burden of Proof

- The Applicant carries the initial burden of proof.
- Applicant must show through competent substantial that it complies with the land use requirements of the City. *Bd. Of County Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993).



Burden of Proof Shift



- Once the Applicant's burden is met, the burden shifts to the Opponent(s).
- Opponents must then show through competent substantial evidence that there is a legitimate purpose to deny the request. *Id.*; see also, *City of Hialeah Gardens v. Miami Dade Charter Foundation Inc.*, 857 So. 2d 202 (Fla. 3d DCA 2003)

Elected Official Role

- If you have Particular Knowledge Base on a Subject Matter at Issue, Ask Questions of Witnesses on the Subject.
- If the Witnesses Do Not Have Answers, Request That the Answers Be Provided at a Future Hearing.
- You can be a Witness or Judge....
You Cannot Be Both!





Essential Requirements of Law

- Application of the Right Law/Code.
- Correct Interpretation of the Law/Code.
- Meet Constitutional Requirements.



Essential Requirements of Law

- Must be more than legal error, the departure must result in a miscarriage of justice. *Malloy v. Gunster, et. al.*, 850 So. 2d 578 (Fla. 2d DCA 2003).
- Courts generally give deference to agency interpretations of its own code. *Pruitt v. Sands*, 84 So. 3d 1267 (Fla. 4th DCA 2012).



Judicial Review of Quasi-Judicial Decisions



- Decisions are reviewed by the Circuit Court after a Writ of Certiorari is filed.
- Request for a Review of a Lower Court ruling.
- Known as First Tier Review.
- The Writ must be filed within 30 days of the Board's Rendition of the Written Order.
- The Court's Review is Based on the Quasi-Judicial Record and Briefs.
- There is no discovery; frequently, there is not oral argument.

Writ of Certiorari



- Issues must be raised in the hearing to be preserved for the Reviewing Court.
- The party seeking to challenge must preserve the record (including exhibits) and generate a verbatim transcript.
- No one expects the Quasi-judicial Board to have law degrees or know the Rules of Civil Procedure.
- However, Board should understand the 3 reviewable Quasi-judicial criteria.

Best Practices:

- Set Clear Procedural and Time Requirements Hearing and Observe Them. This includes Staff, Applicant, Affected Parties, Lawyers and Public.
- Ensure that the Hearing Record is Complete.
- Ensure the 3 Quasi-Judicial Hearing Standards have been Observed.
- Remember Civility, Order and Decorum are the Standard! Don't let Chaos Take Control.







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