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Reply to: Venice

March 21, 2017

The Honorable John W. Holic, Mayor
and Members of the City Council
401 West Venice Avenue
Venice, Florida 34285

Re: Quasi-Judicial Process before City Council

Dear Mayor Holic and Council Members:

Pursuant to your direction, enclosed is a draft ordinance which establishes certain guidelines for making presentations to Council. Our attempt is to offer as few guidelines as possible to achieve the goal of making presentations more efficient while respecting the due process rights of all parties. Most presentations will easily be completed within the timeframes suggested. This draft attempts to give more structure and efficiency to more controversial hearings.

I have attached the City of Punta Gorda's resolution (Attachment 1) for conducting quasi-judicial hearings as well as selected portions of the Naples (Attachment 2), Sarasota County (Attachment 3) and Manatee County (Attachment 4) procedures as examples of how other local governments treat this process.

If you have any questions, Kelly Fernandez and I will be pleased to address them.

Respectfully,

David P. Persson

DPP/dgb
Attachments

cc: Edward Lavallee, City Manager (w/attachments)
Lori Stelzer, City Clerk (w/attachments)
Jeff Shrum, Development Services Director (w/attachments)
Kelly M. Fernandez, Esquire (w/attachments)

CITY OF PUNTA GORDA

RESOLUTION NO. 2870-10

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PUNTA GORDA, FLORIDA, APPROVING QUASI-JUDICIAL HEARING PROCEDURES AND RULES FOR EX-PARTE COMMUNICATIONS; REPEALING RESOLUTION 1118-95; PROVIDING FOR CONFLICT; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the City Council, its Boards, Committees and Commissions are required to conduct hearings for rezoning and special use applications, and other land use matters pertaining to individual pieces of property; and

WHEREAS, hearings in such cases are deemed to be quasi-judicial proceedings and certain due process and other constitutional rights must be afforded to the applicant and to the public; and

WHEREAS, pursuant to Section 286.0115, Florida Statutes, City Council passed Resolution 1118-95 adopting disclosure procedures related to ex-parte communications with public officials; and

WHEREAS, City Council has determined that adoption of formal procedures for quasi-judicial proceedings, including rules for ex-parte communications, will expedite the conduct of City Council, its Board, Committee and Commission meetings and allow the greatest public access possible under the law to elected and appointed officials who act in quasi-judicial proceedings;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PUNTA GORDA, FLORIDA:

1. The Quasi-Judicial Hearing Procedures and Rules for Ex-parte Communications, a copy of which is attached hereto and made a part hereof, is hereby approved.

2. Resolution 1118-95 is hereby repealed.

3. Any resolution or parts of resolutions in conflict herewith are hereby repealed to the extent of such conflict.

4. This Resolution shall become effective immediately upon adoption.

ADOPTED in regular session of the City Council of the City of Punta Gorda, Florida, this 17th of March, 2010.

ATTEST:

SUE FOSTER, City Clerk

HARVEY GOLDBERG, Mayor

APPROVED AS TO FORM:

DAVID M. LEVIN, City Attorney

Attachment 1

City of Punta Gorda, Florida

QUASI-JUDICIAL HEARING PROCEDURES AND RULES FOR EX-PARTE COMMUNICATIONS

I. **Introduction.** The City Council, its Boards, Committees and Commissions make two types of decisions, "legislative" and "quasi-judicial". Legislative decisions involve policy formulation and are made in the sound discretion of the policy-maker. Quasi-judicial decisions, on the other hand, must be based upon the application of reliable facts to pre-established criteria. When making a quasi-judicial decision, the City Council, its Boards, Committees and Commissions act like the judge of a trial where fairness, impartiality, and due process are afforded to all parties. Quasi-judicial decisions are to be made following hearings where evidence and testimony is presented. Quasi-judicial decisions must be based solely upon the evidence and testimony presented at such hearings and in consideration of the pre-established criteria.

II. **Scope and Applicability.** These procedures shall apply to all quasi-judicial hearings held by the City Council or by any Board, Committee or Commission (hereinafter "Board") which hold quasi-judicial hearings. If asked, the City Attorney shall advise the Board which matters are quasi-judicial in nature and shall advise the City Clerk or Board secretary to designate specially such matters on the agenda. As used in this document, the term "Application" shall include appeals, and the term "Applicant" shall include any person initiating an appeal of Board action. The term "Party" shall include City Staff, the Applicant, and any Intervenor. The terms "Applicant", "City Staff", and "Intervenor" shall include any representative thereof.

III. **Proceedings.** Mayor, Vice Mayor, Chairman or other presiding officer (hereinafter "Presiding Officer") shall conduct the proceedings and maintain order. The City Attorney or Board Attorney shall represent the City Council or Boards, offer advice on rulings pertaining to all evidentiary and procedural issues and objections, and advise the City Council or Boards as to the applicable law and necessary factual findings. Hearings shall be conducted informally, but with decorum. Formal rules of procedure shall not apply except as set forth herein; however, fundamental due process shall be accorded.

IV. **Unauthorized Communications.** In all quasi-judicial hearings, all rulings must be based only upon competent, substantial evidence presented at the hearing. Competent, substantial evidence is defined as relevant and material evidence that a reasonable mind would accept as adequate to support the conclusions reached. In accordance with Section 286.0115(1), Florida Statutes, ex parte communications, i.e., verbal or written communications made outside of the hearing, received by City Council or Board members in quasi-judicial matters is permissible, but may not form the basis of any decisions. The adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with City Council or Board members:

1. The substance of any ex parte communication with a City Council or Board member which relates to a quasi-judicial action pending before the Council or Board 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 City Council or Board member may read a written communication from any person. However, a written communication that relates to a quasi-judicial action pending before the Council or Board shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter. Such written communication, however, is considered to be hearsay and may not be the basis of any decision.

3. City Council or Board members may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. 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. The expert opinion, however, may not form the basis of any decision unless the expert attends the public hearing and is available for cross-examination by all interested parties.

4. Disclosure made pursuant to subparagraphs 1, 2 and 3 must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are give a reasonable opportunity to refute or respond to the communication.

V. Witnesses and Supporting Materials.

1. City Staff shall prepare a report, recommendation and supporting materials, a copy of which shall be available to the Applicant and to the public at the City Clerk's Office. Included in the supporting materials will be copies of all exhibits and documents upon which City Staff's recommendation is based.

2. The Applicant shall submit a detailed outline of the argument in support of its application, copies of all exhibits which will be presented at hearing and the names of all witnesses who will be called to testify in support of the application (including resumes for any witness the party intends to qualify as an expert).

VI. Party Intervenors. The Presiding Officer may allow a person to intervene as a Party Intervenor if they meet the following requirements:

1. The person must have an interest in the application, which is different than the public at large.

2. At least seven business days prior to the hearing, the person shall submit a written request to intervene including: a detailed outline of their interest in the application and argument in favor or against it, copies of all exhibits which will be presented at the hearing and the names and addresses of all witnesses who will be called to testify on their behalf (including resumes for any witness the person intends to qualify as an expert).

VII. Conduct of Hearing.

1. The Presiding Officer shall call the proceeding to order and announce that the hearing has begun. The Presiding Officer may extend any of the following time limits should the Presiding Officer determine that such extension is necessary to afford a fair presentation of the case.

2. The City Clerk or staff liaison shall swear in all witnesses who are to testify at the hearing.

3. The order of proof shall be as follows:

   a. City Staff shall briefly describe the Applicant's request, introduce and review all relevant exhibits and evidence, report City Staff's recommendation, and present any testimony in support of City Staff's recommendation. City Staff shall have a maximum of 30 minutes to make their full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross-examination or questions from the City Council or a Board member.

   b. The Applicant shall present evidence and testimony in support of the application. The Applicant shall have a maximum of 30 minutes to make its full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross-examination or questions from the City Council or a Board member.

   c. Any Party Intervenor shall present evidence and testimony in support of or opposed to the application. A Party Intervenor shall have a maximum of 30 minutes to make his/her full presentation, including opening statement and all direct presentation by witnesses, but excluding any cross-examination or questions from the City Council or a Board Member.

   d. Any other persons present who wish to submit relevant information to the City Council or Board shall speak next for a maximum of three minutes each (excluding any cross-examination or questions from the Council or a Board member). All such persons shall be sworn and shall be subject to cross-examination by any party.

4. The Presiding Officer shall call three (3) times for public comment.

5. The City Council or Board shall enter a motion to close the public hearing.

6. The City Attorney or legal advisor will advise the City Council or Board as to the applicable law and the factual findings that must be made to approve or deny the application.

7. The City Council or Board will conduct open deliberation of the application. The Presiding Officer shall have the discretion to reopen the proceeding for additional testimony or argument by the parties when an outcome substantially different than either the granting or denial of the application is being considered. After deliberations, a vote shall be taken to approve, approve with conditions or deny the application.

VIII. **Examination by City Council; and City Attorney or Legal Advisor.** City Council members, Board members, City Attorney or legal advisor may ask questions of persons presenting testimony or evidence at any time during the proceedings until commencement of deliberation.

IX. **Cross-Examination of Witnesses.** After each witness testifies, City Staff, the Applicant and the Party Intervenor shall be permitted to cross-examination each witness. Members of the public will not be permitted to cross-examine witnesses. Cross-examination shall be permitted only as would be permitted in a Florida court of law.

X. **Rules of Evidence.**

1. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in a court of law in Florida. Irrelevant, immaterial, harassing, defamatory or unduly repetitive evidence shall be excluded.

2. Hearsay evidence may be used for the purposes 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 civil action.

3. Documentary evidence may be presented in the form of a copy or the original. Upon request, parties shall be given an opportunity to compare the copy with the original.

4. Not all admissible evidence may be the basis of a finding by the Board. Only competent, substantial evidence may be the basis of findings. As noted above, competent, substantial evidence is defined as relevant and material evidence that a reasonable mind would accept as adequate to support the conclusions reached.

XI. **Statements of Counsel.** Statements of counsel, or any non-attorney representative, shall only be considered as argument and not testimony unless counsel or the representative is sworn in and the testimony if based on actual personal knowledge of the matters which are the subject of the statements.

XII. **Continuances and Deferrals.** The City Council or Board shall consider requests for continuances made by City Staff, the Applicant, or a Party Intervenor and may grant continuances in its sole discretion. If, in the opinion of the City Council or Board, any testimony or documentary evidence or information presented at the hearing justifies allowing additional research or review in order to properly determine the issue presented, then the City Council or Board may continue the matter to a time certain to allow for such research or review.

XIII. **Transcription of hearing.**

1. The City Clerk or staff liaison shall preserve the official proceeding of the hearing through tape recording and/or video recording and summary minutes.

2. The Applicant or Party Intervenor may arrange, at its own expense, for a court reporter to transcribe the hearing and the transcription shall become the official transcript.

XIV. **Maintenance of Evidence and Other Documents.** The Office of the City Clerk or staff liaison shall retain all of the evidence and documents presented at the hearing.

XV. **False Testimony.** Any willful false swearing on the part of any witness or person giving evidence before the Council or Board as to any material fact in the proceedings shall be deemed to be perjury and shall be punished in the manner prescribed by law for such offense.

XVI. **Failure of Applicant to Appear.** If the Applicant or Party Intervenor fail to appear at the time fixed for the hearing, and such absence is not excused by the Council or Board, the Council or Board may proceed to hear the evidence and render a decision thereon *in absentia.*

matter of permanent public record and ~~shall~~ will be presented to City Council for review and approval. An electronic ~~taped or~~ audio/video recording of meetings may be made, but ~~shall~~ are not ~~be~~ considered the official public record of the meeting.

Section 9. Public Hearings ~~(Other than Quasi-judicial)~~.

The purpose of public hearings is to receive input from citizens regarding the issue before City Council. Public hearings are held for: ordinances on second reading, land use and development including variances, budgets, utility rate changes, and as otherwise determined by City Council.

(a) For ordinances generally, the public hearing ~~and public comment shall~~ will be ~~limited to~~ on the dates on which the ordinance is considered on the first and second reading. City Council may discuss the provisions of an ordinance upon presentation on first and second readings and receive public comment.

(b) For proposed ordinances that change the zoning map designation for 10 acres or more or the list of permitted, conditional, or prohibited uses within a zoning category, the public hearing ~~shall~~ will be on both the first reading and the second reading of the ordinance. The number of readings and hearings may vary depending upon state law requirements.

(c) The City Attorney or City Manager ~~shall~~ will summarize the issue before City Council rather than read the entire staff report, unless otherwise requested by City Council. Ordinances and resolutions will be read into the record by title only.

(d) The Mayor ~~shall~~ will remind the public to fill out a Speaker Registration Form prior to the start of the public hearing.

(e) Following the summary explanation, the Public Hearing will open. Speaker Registration forms ~~shall~~ will be required. Public comments ~~shall~~ will be limited to three minutes unless otherwise determined by the Mayor or a majority of City Council.

(f) When the public comments have concluded, the Mayor will close the Public Hearing. Debate may continue until the question is called.

Section 10. Quasi-judicial Proceedings and Public Hearing.

(a) After introduction of the petition by staff, the Petitioner's presentation ~~shall~~ will occur first and petitioner ~~shall~~ will have up to ~~twenty (20)~~ minutes to present the petition, followed by questions from Council of the petitioner. A majority of City Council members may grant additional time. Petitioner should notify the Manager in advance of the proceeding if it is recognized that additional time for presentation is desirable.

(b) Staff ~~shall~~ will then provide an analysis of the petition and staff report for a period of up to ~~twenty (20)~~ minutes, followed by questions from City Council.

(c) The Mayor ~~shall~~ will call for public comment by those who have completed a

Speaker Registration form. Each speaker ~~shall~~ will have up to three ~~(3)~~ minutes to present comments on the petition.

(d) Upon conclusion of public comment, the public hearing ~~shall~~ will be closed.

(e) Petitioner ~~shall~~ will have up to five ~~(5)~~ minutes to present any final summation, followed by questions from City Council.

(f) Questions of an informational nature from the petitioners or public speakers may be asked through the Chair~~; however, direct questions between the petitioner and witnesses shall not be permitted~~.

(g) City Council members should introduce a motion, debate the petition, and call for the question only after all of the evidence has been entered into the record.

(h) Request for a "time certain" may be presented to the Mayor at least five days in advance of the publication of the City Council Agenda. Requesting a "time certain" does not ~~guaranty~~ guarantee that such "time certain" will be granted.

(i) Petitioner ~~shall~~ may provide electronic copies of presentation materials to the City Manager or staff prior to publication of the City Council Agenda for inclusion with the Council Agenda Packets.

(j) Handouts provided during the proceeding ~~shall~~ will consist of ~~twelve (12)~~ copies for City Council and staff.

(k) Decisions of Council ~~shall~~ will be fair and impartial; be based only upon the testimony and other evidence presented or contained in the record at the hearing; and must apply the ordinances ~~correctly~~ in accordance with the essential requirements of the law.

(l) If a petition is rejected, City Council ~~shall~~ will state the reason(s) in the ordinance, resolution or motion.

(m) Petitions, documents, exhibits, photos, or other evidence in support of a petition must be submitted to the departmental staff by close of business on the Monday, 16 days prior to the hearing by City Council. Amendments to the submittal must be received by the close of business on Friday, 11 days before the hearing. Failure to do so is grounds for the Council to determine not to admit the new exhibit into evidence or consider the exhibit or testimony pertaining to it, for the matter to be continued, or for the matter to be remanded to the appropriate advisory board. It is the Petitioner's responsibility to ensure that all exhibits that it wants to be considered are in the council packet prior to the foregoing deadline. Deadlines falling on holidays are extended to the next non-holiday workday.

(n) The Petitioner or Petitioner's Agent may provide PowerPoint or other electronic presentations and written presentations intended to summarize, provide examples, or clarify the Petition at the hearing. Such presentations will not be used to substantially or materially change the Petition as published with the meeting Agenda and must be provided to departmental and visual arts staff at least 2 days in

advance of the hearing.

(o) Members of the public may provide written information in advance of or during the quasi-judicial proceeding, and oral comments at the designated "public comment" period during the quasi-judicial proceeding.

Section 11. Public Hearings by Committee, Mayor, or City Manager.

When authorized by law or ordinance, City Council may appoint a special magistrate or committee, or designate the Mayor or City Manager to assist in or hold a public hearing for City Council at any time upon any matter pending before it. The requirements of the Sunshine law ~~shall~~ will apply in the same manner as it would apply to City Council. Minutes or reports of hearings held by special committees, the Mayor, or City Manager ~~shall~~ will be filed as a public record.

Section 12. Conduct of Meetings.

(a) The Mayor ~~shall~~ will:

(1) Conduct the meeting firmly and courteously while maintaining order at all times.

(2) Ensure that a member is recognized before speaking, and permit only one person to speak at a time.

(3) Allow persons not on Council to speak only at designated times. Apply time limits uniformly.

(4) Rule out of order remarks which involve personalities or attack motives or character of another member, or which are not related to the matter before the City Council.

(5) Reject frivolous motions and motions not permitted by the Rules. Require motions to be stated affirmatively and to the point.

(6) Restate the motion and allow the maker of the motion to speak first.

(7) Allow a member additional opportunities to speak on a matter only after all other members have had an opportunity to speak.

(8) Allow interruption of a speaker only by consent of the speaker or for permitted reasons (e.g. "Point of Order," "Point of Information, Please.")

(9) Recognize citizens wishing to address City Council on the issues before Council following the debate, but prior to the vote.

(10) Reject discussion of motions which are not debatable (e.g. adjourn, call for the question~~;~~, continuance~~;~~, recess, table).

(11) Recognize that all members have equal rights, privileges, and obligations.

hearings may be continued from a prior meeting, or scheduled on days or evenings in addition to the second and fourth Tuesday and Wednesday of each month.

(a) Agenda items under consideration shall be scheduled for the morning (generally commences at 9:00 a.m.), afternoon (generally commences at 1:30 p.m.) or evening (generally commences at 5:01 p.m.). Matters under consideration shall be heard at the designated time: 9:00 a.m., 1:30 p.m. or 5:01 p.m. or as soon thereafter as practicable.

(b) Public Comment – The public is always invited to speak at a public hearing; however, the following time limits shall apply. (These times may vary due to subject matter; i.e. there may be no petitioner or applicant.)
   (1) Petitioner presentation – 20 minutes
   (2) Citizen comments – 5 minutes per speaker
   (3) Petitioner rebuttal – 5 minutes

(c) Public Hearings – Presentations Scheduled
   (1) The Chair reads the statement, "The Sarasota County Charter requires that evidence and testimony presented during public hearings shall be under oath. Persons presenting evidence and/or testimony are required to complete and sign the Request to Speak card."
   (2) The Chair reads the description of the agenda item(s) to be considered and opens the public hearing.
   (3) The staff makes a presentation for the agenda item being considered.
   (4) The Chair inquires whether there is any discussion or questions of staff.
   (5) The petitioner makes a presentation, limiting the time to 20 minutes.
   (6) The Chair inquires whether there is discussion or questions for the petitioner or staff.
   (7) Public comment follows and unless otherwise determined by the Chair, shall be limited to 5 minutes per speaker. Petitioner rebuttal is limited to 5 minutes.
   (8) The Chair closes the public hearing and inquires if there is any discussion.
   (9) The vote is taken.

(d) Public Hearings – Presentations Upon Request
   (1) The Chair reads the statement, "The Sarasota County Charter requires that evidence and testimony presented during public hearings shall be under oath. Persons presenting evidence and/or testimony are required to complete and sign the Request to Speak card."
   (2) The Chair reads the description of the agenda item(s) to be considered and opens the public hearing.
   (3) The Chair inquires if any Commissioner desires staff or applicant presentations or if any updates need to be brought to the Board's attention. If any Commissioner requests presentations, the hearing will proceed as in (c) above.
   (4) The Chair inquires if any Commissioner has questions or comments on the item(s).
   (5) The Chair inquires if anyone from the public would like to speak on the item(s).
   (6) The Chair closes the public hearing and calls for a motion.
   (7) The vote is taken.

(e) Quasi-Judicial Hearings – The procedures to be followed for quasi-judicial hearings are generally the same as for Public Hearings, as provided above:

(1) Florida law requires that the Board's decision in a quasi-judicial action be supported by competent substantial evidence presented to the Board during the hearing on the application.

(2) Ex-parte Communications

i. Definition: Written or oral communications regarding quasi-judicial matters pending before the Board received outside the record of the related public hearing.

ii. The County Attorney suggests that Commissioners refrain from participating in ex-parte communication whenever possible regarding a quasi-judicial matter to avoid the creation of the presumption of prejudice.

iii. The presumption of prejudice may be overcome if the context of the ex-parte communication and the identity of the person are disclosed and made a part of the record at the public meeting before the final action on the matter.

iv. A written communication that relates to a quasi-judicial action pending before the Board (such as a zoning decision) shall be made a part of the record before final action on the matter.

v. If a Commissioner conducts an investigation or site visit or receives expert opinions regarding a quasi-judicial action pending before the Board, 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.

(f) Convening as other Governmental Entities

In addition to convening as the Sarasota Board of County Commissioners, the Board also sits as numerous other governmental entities, such as the Sarasota County Transportation Authority and the Community Redevelopment Agency. Prior to considering an agenda item related to these other entities, the Chair will recess as the Board of County Commissioners and convene as the appropriate authority. When the action has been taken, the Chair will recess as the other governmental entity and reconvene as the Board.

18: <u>Board Meetings – Special.</u> Special meetings may be held on call of the Chair or County Administrator.

(a) If possible, the time and place of the special meeting will be added to the Sarasota County Government County Calendar advertisement.

(b) If there is insufficient time to advertise the meeting, each Commissioner, the Clerk of the Circuit Court and County Comptroller, the Sheriff, the County Administrator and the County Attorney shall be given prior notice of the meeting. Such notice shall be provided by any reasonable means, including telephone, cell phone, email or facsimile transmission to the person's residence, place of employment, or other location, whichever site is most likely to ensure the person's receipt of the notice.

(c) If there is insufficient time to advertise the meeting, notice shall also be provided to the business office of each local media organization that has on file a written request for notice of

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5.4.2.1 committing acts of violence toward any person;

5.4.2.2 making threats of violence or speaking "fighting words" that are likely to provoke violence;

5.4.2.3 disrupting the proceedings with excessive commotion or excessively loud shouting or other noise or use of obscene or crude language;

5.4.2.4 interfering with the rights of others to speak, hear, see, or attend the proceedings;

5.4.2.5 being unduly repetitious or presenting matters not relevant to the agenda item under consideration;

5.4.2.6 making personal attacks or insults against any person;

5.4.2.7 speaking on a subject about which the Board has already taken a position or about which the Board has voted not to receive further comment;

5.4.2.8 continuing to speak after the allotted time has expired or after having been ruled out of order; or

5.4.2.9 speaking on a subject that is clearly outside the purview of Section 2.1.

5.4.3 The Chairman shall rule out of order any person(s) violating these provisions for orderly meetings. In appropriate situations (e.g., if such person(s) refuse to cease such violations), the Chairman may have such person(s) removed from the meeting, hearing, or workshop by law enforcement personnel or take such other actions as may be reasonably necessary to enforce these requirements.

5.5 PUBLIC HEARINGS.

5.5.1 **Explanation of Terms.** For purposes of the Board Procedures, unless the context requires otherwise, the following terms have the definitions set forth or the usages explained below:

5.5.1.1 "Public Hearing" - refers to a hearing where the public is both invited and entitled to be heard on a matter pending before the Board, typically requiring an advertisement in a local newspaper of the matter to be considered. Some examples are hearings to consider adoption, repeal, or amendment of ordinances, or in some cases, resolutions.

5.5.1.2 "Quasi-judicial Hearing" - refers to a type of public hearing in which the Board is required to assume a more adjudicatory role, as distinguished from a legislative role. In quasi-judicial hearings, certain procedural requirements are imposed by law. The following types of public hearings shall be conducted as quasi-judicial hearings: individual parcel zoning atlas amendments; development agreements if accompanied by a quasi judicial development application; developments of regional impacts ("DRI"); vested rights determinations; consideration of a general development plan or site plan application; an appeal to the Board of an administrative determination; and such other hearings as may be required by law to be treated as quasi-judicial.

5.5.1.3 "Applicant(s)" - means persons who have duly made formal application for Board action or approval in a quasi-judicial context of an item affecting their legal or property rights.

5.5.1.4 "Proponent(s)" - in a quasi-judicial setting, means person(s) other than an applicant, who support an applicant's position; or, in other settings, means persons who favor adoption of an ordinance or resolution or an affirmative decision on a matter under consideration by the Board.

5.5.1.5 "Opponent(s)" - in a quasi-judicial setting, means person(s) who oppose an applicant's position; or, in other settings means persons who oppose adoption of an ordinance or resolution or an affirmative decision on a matter under consideration by the Board.

5.5.1.6 "Affected Persons" - means an applicant in a quasi-judicial hearing or an opponent or proponent whose interest and involvement in a public hearing matter is such that he or she would have legal standing under Florida Law as a party in court or administrative litigation challenging Board action in the matter.

5.5.2 **Conduct of Public Hearings (Non-quasi-judicial).** Public hearings involving a non-quasi-judicial matter(s) shall ordinarily proceed in the following manner:

5.5.2.1 Initial Presentation by Staff. County staff shall make the initial presentation to the Board regarding any item under consideration.

5.5.2.2 Public Comment. After presentation by staff, the Chairman shall open the public comment portion of the public hearing for the purpose of hearing persons who want to be heard on the item under consideration.

5.5.2.3 Closing of Public Comment. The Chairman shall close the public comment portion of the public hearing upon the conclusion of the comments of the last appropriate speaker or the expiration of the speaking times allowed under the procedures. Thereafter, unless time for public comment is extended or public comment is re-opened in accordance with these procedures, no additional public comments shall be allowed except in specific response to questions by staff or Commissioners.

5.5.2.4 Staff Response and Summary. After public comment is closed, staff shall be allowed an opportunity to respond, to summarize, or to further explain staff's position and to advise of changes in staff's position, if any.

5.5.2.5 Inquiry, Clarification and Comments During Presentations. It is the intent of the Board that its public hearings be orderly and to that end interruption of presentations is ordinarily to be avoided. It is also the intent of the Board that a complete record of relevant facts be established and a complete understanding of the matters under consideration be obtained. Accordingly, the Chairman, at any time during a public hearing, may allow Commissioners to comment or make inquiry of persons addressing the Board, or of staff or other persons in attendance or may allow staff, the County Administrator or the County Attorney to comment or make such inquiries.

5.5.3 **Conduct of Quasi-judicial Public Hearings.**

5.5.3.1 Oath or Affirmation. Prior to addressing the Board at a quasi-judicial public hearing, each person who intends to address the Board shall declare, pursuant to oath or affirmation administered by the Clerk, or other duly authorized person, that the factual statements or representations that he or she will present shall be truthful and accurate. The form of oath or affirmation shall be substantially similar to that provided in "Attachment 1" hereto. Any person who knowingly makes a false statement or representation under oath or affirmation shall be subject to criminal and other sanctions as provided by law,

in addition to any consequences provided for under the Board Procedures or any Manatee County ordinance.

5.5.3.2 Introduction by Staff. County staff shall introduce the quasi-judicial matter to the Board so as to provide an overview of the proposed matter, and identify issues for the Board's consideration

5.5.3.3 Ex Parte Communications. Board members may enter into the record factual matters which are not already contained in the record, when such Board members have personal knowledge pertaining to the physical characteristics of a site, its surroundings, or other communications relevant to the matter being heard. (See Resolution No. 05-179 for a description of the types of ex parte communications that are required to be entered into the record)

5.5.3.4 Applicant's Presentation. After staff presentation, the applicant(s) shall be allowed to make a presentation to the Board. The applicant has the burden of proving that the proposal is consistent with the comprehensive plan and complies with the standards for approval in the Land Development Code.

5.5.3.5 Staff's Presentation. After applicant's(s') presentation, staff shall present the staff's report and recommendation.

5.5.3.6 Public Comment. After presentation by the applicant(s) and staff, the Chairman shall open the public comment portion of the quasi-judicial hearing for the purpose of hearing persons who want to be heard on the item under consideration.

5.5.3.7 Closing of Public Comment. The Chairman shall close the public comment portion of the public hearing upon the conclusion of the comments of the last appropriate speaker or the expiration of the speaking times allowed under these procedures. Thereafter, unless time for public comment is extended or public comment is re-opened in accordance with these procedures, no additional public comments shall be allowed except in specific response to questions by staff or Commissioners.

5.5.3.8 Staff Response and Summary. After public comment is closed, staff shall be allowed an opportunity to respond, to summarize, or further explain staff's position and to advise of changes in staff's position, if any.

5.5.3.9 Applicant's(s') Rebuttal Presentation. After staff response, Applicant's(s') rebuttal shall be allowed in quasi-judicial matters. Rebuttal shall only address comments made in the previous presentations.

5.5.3.10 Factual Errors. Any person(s) who believe that the rebuttal presentation includes an error of fact may be allowed an opportunity to point out such error of fact. This relates to a demonstrable falsehood or misstatement of objective fact. It is not an opportunity to argue the merits of a proposal.

5.5.3.11 Board And Staff Inquiry. After staff and applicant(s), have made presentations as outlined above and the public comments portion of the hearing is closed, the Board shall have a final opportunity to comment or ask questions of any applicant(s), staff member or other persons who provided testimony. The Chairman may allow staff to respond to comments of an applicant(s) or Citizen at this time.

5.5.3.12 Inquiry, Clarification and Comments During Quasi-Judicial Presentations. It is the intent of the Board that its quasi-judicial public hearings be orderly and to that end interruption of presentations is ordinarily to be avoided. It is also the intent of the Board that a complete record of relevant facts be established and a complete understanding of the matters under consideration be obtained. Accordingly, the Chairman, at any time during a public hearing, may allow Commissioners to comment or make inquiry of persons addressing the Board, or of staff or other persons in attendance or may allow staff, the County Administrator or the County Attorney to comment or make such inquiries. In quasi-judicial hearings, affected parties may ask questions, through the Chairman, of the person(s) who make a presentation to the Board. The Chairman may allow the affected parties' question(s) during the presentation or may require the question(s) to await the conclusion of the presentation, in accordance with the above stated intent of the Board.

5.5.4 **Time Periods for Public Hearing Matters.** The following time limits shall apply to presentations in public hearings:

5.5.4.1 an applicant in a quasi-judicial matter shall be entitled to a total of fifteen (15) minutes without interruption;

5.5.4.2 persons who have been authorized to represent an organization with five (5) or more members or a group of five (5) or more persons shall be entitled to speak ten (10) minutes without interruption;

5.5.4.3 all other persons shall be entitled to speak three (3) minutes each without interruption;

5.5.4.4 an applicant's rebuttal shall be limited to five (5) minutes, unless otherwise set by the Chairman; and

5.5.4.5 pointing out factual errors shall be limited to one (1) minute, unless otherwise set by the Chairman.

5.5.5 **Other Procedural Guidelines.**

5.5.5.1 Registration of Speakers Persons who desire to make presentations at a public hearing shall, prior to the time at which the item is to be heard, register with the designated staff on the forms provided, and shall provide such information as required to organize the agenda and order of presentation. Five (5) or more persons associated together as Proponents or Opponents of an item may be required to select a spokesperson.

5.5.5.2 Limit On Presentations. No person who has made a presentation for or against an item at a given meeting shall be allowed to make additional comments as of right except where due process requires it.

5.5.5.3 Authorization of Group Representatives. Before a person representing an organization or group speaks, that person shall state whom he or she represents and establish how he or she received authorization to speak on behalf of such organization or group of persons, which shall include written authorization, unless the Chairman waives this requirement. In quasi-judicial hearing matters, anyone representing an organization must present written evidence of their authority to speak on behalf of the organization in regard to the matter under consideration, unless the Chairman waives this requirement, in accordance with Sec. 502.6.2, Land Development Code. The Board may make further inquiry into the representative authority of such person. Only one ten minute time allotment per hearing is allowed for each organization or group of persons represented at the hearing.

5.5.5.4 Interruption of Presentations. Notwithstanding any provisions herein, the Chairman of the Board, the County Administrator, the Planning Department Director as to Land Use items, or the County Attorney may interrupt and request termination or other appropriate limitation of any presentation or discussion of matters that should not appropriately or legally be considered by the Board under applicable Florida Statutes, decisions of Florida or federal courts, County ordinances or County code provisions in deciding the item then under consideration.

5.5.5.5 Experts. In quasi-judicial proceedings, persons purporting to offer expert testimony shall identify any educational, occupational, and other expertise that they possess that is relevant to their qualifications to speak regarding the matter under consideration. Persons purporting to offer expert testimony in other contexts, such as legislative proceedings, may likewise be required to identify their expertise. Any Commissioner, the County Administrator, or the County Attorney may inquire further as to such expertise.

5.5.5.6 Additional Time For Presentations. The Board or the Chairman, without objection, may allow more than the allotted time for presentations by an applicant, proponent, or an opponent, or other speaker regarding an item, if the additional time is requested. In order to conserve time and facilitate an orderly meeting, preference shall be given to such requests when they are made in advance of the meeting to the County Administrator, or in the case of land use items, to the Planning Department Director. If more than a total of one-half (½) hour is requested by an applicant, proponent, or opponent, the request must be submitted in writing not later than the day before the meeting at which the item is to be heard; provided, however, even in the absence of a timely request for additional time to make a presentation, the Chairman, without objection, or the Board may grant such extension where, in its discretion, it is necessary to do so because of the considerations of law, equity, or fairness.

5.5.5.7 Continued Public Hearings

5.5.5.7.1 GENERALLY. In any matter where it is known that a scheduled public hearing will be continued to a future date certain, the staff report may be postponed or abbreviated and public comment may be limited to those persons who state that they believe they cannot be available to speak on the

date to which the public hearing is being continued. Such persons shall be allowed to make their comments at the then current meeting if there is a quorum; provided, however, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentations, if otherwise allowable, at any subsequent meeting.

5.5.5.7.2 REQUEST FOR A FULL BOARD. Not more than one continuance of a public hearing shall be granted on the grounds of a desire to obtain attendance by the entire membership of the Board. Once a request to continue has been granted on those grounds, further continuances may be granted only for other grounds and where good cause is shown.

5.5.5.8 Termination of Presentations. At any Board proceeding, the Chairman, unless overruled by a majority of the Commissioners present, may restrict or terminate presentations which in the Chairman's judgment are irrelevant, frivolous, unduly repetitive, out of order, or in violation of the Board Procedures.

5.5.5.9 Written Comments. Applicant(s), Proponent(s), and Opponent(s) of any matter under consideration by the Board shall be entitled to submit timely written comments for consideration by the Board. Relevant and admissible written comments submitted shall be considered and entered into the record of the meeting as provided elsewhere in the Board Procedures. Written comments received by Commissioners regarding a matter that is the subject of a quasi-judicial public hearing shall be distributed to all Commissioners, the Planning Department and the County Attorney and shall be made available for review by the applicant and the public in a project reading file maintained by the Planning Director (for land use matters) and by the County Administrator (for all other matters).

5.5.5.10 Officials and Dignitaries. Notwithstanding other provisions hereof, the Chairman may allow any elected or appointed public official, or representative thereof, or other dignitary to