

City of Delray Beach Procedures for Quasi-Judicial Hearings
Updated March 30, 2017

1. Definitions:

- A. ***Applicant*** - the owner of record and/or his or her authorized agent(s).
- B. ***Citizen Participants/Witnesses*** - those members of the public, other than the City or the Applicant, who attend a quasi-judicial public hearing for the purpose of being heard on a particular application.
- C. ***Ex Parte*** - communications, oral or written, between members serving on the board or commission and the public, other than those made on the record at the hearing. This also includes site visits and any other information related to the application that has been obtained outside of the public hearing.
- D. ***Party*** – In accordance with *Carillon Community Residential, etc., et al. v. Seminole County, et al.*, 45 So.3d 7 (Fla. 5th DCA 2010), "...the parties in all quasi-judicial proceedings are the applicant and the government agency." The parties in quasi-judicial proceedings conducted by the City of Delray Beach are the applicable city board or commission and the party.
- E. ***Quasi-Judicial Proceedings*** – proceedings where existing policies and regulations are applied to a specific property and/or individual. Examples are site specific rezonings, conditional use approvals, site plan approvals, waivers, variances, code compliance hearings, certificates of appropriateness, and historic designations, but not land use amendments or amendments to the comprehensive plan and not generally, amendments to the Land Development Regulations. Plat approvals are administrative.
- F. ***Relevant Evidence*** – evidence that either strengthens or weakens the application by supporting or disapproving factual assertions related to the application. Evidence must also be competent and substantial.
- G. ***Competent and Substantial Evidence*** - 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. When the adjective competent is used to modify "substantial" the evidence relied upon to sustain the ultimate finding must be sufficiently relevant and material that a reasonable mind would accept it as adequate to support a conclusion. *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957).

2. **General Processing for Hearings**

A. **File/Inspection.**

- (1) **Establishing the File.** The Planning and Zoning Department shall establish a project file. All written communications shall be sent to the Planning and Zoning Department. The project file will be maintained in the Planning and Zoning Department.
- (2) **Contents of the File.** The project file will contain all written communications that are sent to the Planning and Zoning Department prior to the hearing. The project file will include, but will not be limited to, all Staff reports, pertinent sections of the Land Development Regulations and Comprehensive Plan. The project file may contain curricula vitae, drawings, documents and all other pertinent documents.
- (3) **Index.** The Planning and Zoning Department staff will provide the City Clerk or Board clerk with an index to the project file at the Hearing.
- (4) **Supplementation of the File.** The City Clerk or Board clerk will supplement the project file with all evidence accepted into the record during the hearing.
- (5) **File for Inspection.** The project file will be made available upon request for public inspection.
- (6) **File Placed into the Record.** The Planning and Zoning Staff member making the presentation shall place the project file into the record at the hearing.

B. **Time Limits**

- (1) **Citizen Participants in General.** Citizen participants not represented by a representative speaker shall have three (3) minutes to speak.
- (2) **Participants with a Representative.** Speakers representing a group of six (6) or more interested citizens in attendance at the meeting shall have six (6) minutes to speak, so long as those being represented identify themselves and yield their time to the representative at the meeting.

- (3) **Representing an Organization.** Speakers representing an organization that is comprised of interested citizens shall have six (6) minutes to speak.
- (4) **Extension of Time by the Commission or Board.** The Commission or the Board may, at their reasonable discretion, extend the time for presentations. However, once the public portion of the hearing is closed no further public comment shall be heard except for any cross-examination conducted by the Commission or Board or the Applicant.

3. **Conduct of the Hearing.**

- A. **Swearing in of Witnesses.** The Applicant, all Citizen Participants/Witnesses and their representatives, and City Staff who plan to offer testimony or submit evidence at the hearing shall collectively be sworn at the beginning of the hearing by the City Clerk, the City Clerk's designee, or the Board clerk.
- B. **Disclosure of Ex Parte Communications.** The Commission or Board shall disclose any ex parte communications and disclose whether any member physically inspected the property. To the extent possible, the Commissioner or Board member shall identify with whom the communication took place, summarize the substance of the communication, and the date of the site visit, if any. The Commissioners or Board members shall give the City Clerk, his or her designee, or Board clerk, any written ex parte communications they have received that are not already included in the project file.
- C. **Presentation of the Case.**
 - 1. The Applicant shall present its case.
 - 2. The City Staff shall present its case.
 - 3. The public portion of the hearing shall be opened and testimony from Citizen participants or their representatives may be taken, both for and against the application.
 - 4. The parties shall have the opportunity to cross-examine Citizen Participants/Witnesses after the presentation of a witness, and the manner and the conduct of cross-examination shall be as provided in these rules. The public portion of the hearing shall be closed and no additional testimony shall be taken from or questions posed to Citizen Participants/Witnesses.

5. The Commission or Board may ask questions of the Applicant or City Staff at any time during the proceeding.
 6. The Commission or Board will commence deliberations and render a decision.
- D. **Basis of Decision.** All decisions shall be based on the evidence presented at the hearing on the case, which shall include the agenda materials, minutes, the entire project file, testimony presented, and other evidence presented. Strict rules of evidence shall not apply, but evidence must be relevant to the issues before the Commission or the Board and be of sufficient quality to be deemed both competent and substantial.
5. **Cross-examination.**
- A. **Persons to be Cross-Examined.** The City Staff, the Applicant, and Citizen Participants/Witnesses are subject to cross-examination as set forth herein.
 - B. **Cross-Examination Guidelines.**
 1. Anyone who offers testimony or submits evidence which is accepted into the record for consideration by the Commission or Board may be cross-examined by the parties. The Commission or Board shall have to opportunity to cross-examine any witness first and then the Applicant. Cross-examination may continue until the parties have exhausted their inquiries.
 2. Only the parties (the Applicant and the City) may cross-examine.
 3. The Commission or Board may ask questions of anyone who testifies at any time during the proceedings.
 - C. **Relevancy.** All relevant evidence shall be accepted.
 - D. **Scope.** The scope of the cross-examination shall be limited to the facts alleged by the person testifying in relation to the application.
 - E. **Good Faith Questions.** The cross-examination shall not be designed to merely harass, intimidate, or embarrass the person testifying.
 - F. **Power to Halt Cross Examination.** The Mayor or Board Chair shall determine whether the question and evidence is relevant and the proper scope of cross-examination. In the absence of the Mayor or Board Chair, the term Mayor or Board Chair shall be deemed to include the person authorized to run the meeting in their absence. The Mayor or Board Chair may defer to the City Attorney (or Assistant City Attorney) to determine the relevancy of the question and the evidence and the proper scope of the cross-examination. The person conducting the cross-examination may be

stopped from pursuing a line of questioning, if the questioning is on an issue that is not relevant, the scope of proper cross examination is exceeded, or the cross-examination is conducted in a manner that is designed to harass, intimidate, or embarrass the person being cross-examined. If a person conducting the cross-examination continues to pursue improper lines of questioning, the Mayor or Board Chair may halt the cross-examination.

6. **Applicability.**

These rules only apply to proceedings and hearings that are quasi-judicial in nature. These rules are applicable to the City Commission and all other City Boards.