

City of Delray Beach Procedures for Quasi-Judicial Hearings

1. Definitions:

- A. **Applicant** - the owner of record or his or her authorized agent.
- B. **Citizen Participants** - those members of the general public, other than the City, the Applicant, or other Party to the proceeding, 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.
- D. **Party** - the owner of property located within 500 feet of the property that is the subject of the application and who meets the additional requirements set forth in Section 3.B below.
- E. **Quasi-Judicial Proceedings** – proceedings where existing policies and regulations are applied to a specific property. Examples are site specific rezonings, conditional use approvals, site plan approvals, waivers and variances, plat approvals, certificates of appropriateness, historic designations, but not land use amendments or amendments to the comprehensive plan and not generally, amendments to the Land Development Regulations.
- F. **Relevant Evidence** – evidence that either strengthens or weakens the application by supporting or disapproving factual assertions related to the application.

2. General Procedures for City Commission Consent Items

- A. **Consent Agenda Items**. Applications before the City Commission for plat approval, variances, or waivers may be placed on the consent agenda, if the Applicant signs a statement that the Applicant concurs with the Staff recommendation.
- B. **Removal from Consent Agenda**. The Applicant, the Mayor, any Commissioner, or any member of the public may request that an application for approval of a plat, waiver, or variance be removed from the City Commission consent agenda. If removed, the application will be placed on the next regular City Commission meeting for a quasi-judicial

hearing, or if the Applicant consents, the hearing may take place at the meeting the application was removed from the consent agenda.

3. **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 not be limited to, all Staff reports, pertinent sections of the Land Development Regulations and Comprehensive Plan. The file will 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 documents submitted at 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. **Party Status**

- (1) **Party Status - Written Requests; Timeframe.** In order to obtain status as a Party, the owner of property located within 500 feet of the subject property must make a written request, meeting the requirements of 3B(2) below, which is received by the Planning and Zoning Department three or more business days prior to the hearing.
- (2) **Contents of Request.** The written request shall outline the effect of the application on the owner's property. To obtain Party status, the owner must describe the effect of the application on owner's property that is different from the effect on the public as a whole.

The City Attorney's Office will advise as to whether sufficient facts have been alleged to achieve Party status and shall notify the person requesting Party status of the City Attorney's opinion as to the adequacy of the request. Ultimate decisions as to Party status shall be made by the City Commission or the Board. The decision to confer Party status at the hearing before the City Commission or a Board shall not be seen as a waiver of the City's right to contest the standing of any Party in court.

C. **Time Limits**

- (1) **Staff Time Limits.** The City Staff shall have up to 20 minutes (including the presentation of witnesses and expert witnesses) to present the city's case.
- (2) **Applicant Time Limits.** The Applicant shall have up to 20 minutes (including the presentation of witnesses and expert witnesses) to present the Applicants case.
- (3) **Party Time Limits.** A Party may have up to 20 minutes (including the presentation of witnesses and expert witnesses).
- (4) **Citizen Participants in General.** Citizen participants not represented by a representative speaker shall have three (3) minutes to speak.
- (5) **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, as long as those being represented identify themselves and yield their time to the representative at the meeting.
- (6) **Representing an Organization.** Speakers representing an organization that is comprised of interested citizens shall have six (6) minutes to speak.
- (7) **Extension of Time by the Commission or Board.** The Commission or the Board may, at their discretion, extend the time for presentations.

4. **Conduct of the Hearing.**

- A. **Swearing in of Witnesses.** All Witnesses, Parties, the Applicant, Citizen Participants and their representatives and City Staff who plan to speak 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 City Staff shall present its case.
2. The Applicant shall present its case.
3. Parties may present their case.
4. Citizen participants or their representatives may speak for or against the application.
5. The opportunity to cross-examination will occur after the presentation of a witness, and the manner and the conduct of cross-examination shall be as provided in these rules.
6. The City Staff, the Applicant, and Parties may have two minutes each for rebuttal
7. The Commission or Board may ask questions at any time during the proceeding.
8. 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.

5. **Cross-examination.**

A. **Persons to be Cross-Examined.** The City Staff, the Applicant, Parties, their respective witnesses and Citizen Participants are subject to cross-examination as set forth herein.

B. **Cross-Examination Guidelines.**

1. Citizen Participants are subject to cross-examination by the Mayor or Board Chair only. In the event of an 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. If the Staff, the Applicant, or Parties desire to have the Mayor or Board Chair cross examine a Citizen Participant, they shall, whenever possible, present written cross-examination questions to the Mayor or Board Chair prior to the commencement of the cross-examination. The Mayor or Board Chair shall first ask the cross-examination questions submitted by Staff, then the Applicant, and finally the Parties based on who submitted a request and became a Party first. The Staff, Applicant, and any Parties' cross-examination through the Mayor or Board Chair is limited to two (2) minutes per Citizen Participant.
2. Only the City Staff, the Applicant, or a Party may cross-examine non-Citizen Participant witnesses.
3. Cross-examination by City Staff, the Applicant, or a Party shall be limited to two (2) minutes per witness each.
4. The Commission or Board is not limited to two (2) minutes and 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 any Board that does not have specific rules for the conduct of quasi-judicial proceedings.