

Sec. 2-95. Quasi-judicial matters.

For the purposes of this chapter, the following matters, regardless of whether the final determination is made by the city commission or a board, shall be considered to be quasi-judicial:

- (1) Site specific rezonings, site plans and amendments to site plans;
- (2) Site specific land use amendments;
- (3) Conditional use approvals;
- (4) Variances, including, but not limited to, trees, signs, setbacks, distance requirements between buildings or other variances permitted by the Code of Ordinances;
- (5) Plat approvals;
- (6) Special exceptions which relate to the use of land and business.

(Ord. No. 764, § 1, 10-24-2000)

Sec. 2-96. Procedures for quasi-judicial proceedings.

- (a) In quasi-judicial proceedings on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communications prohibitions. Disclosure of such communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body must be supported by substantial, competent evidence in the record pertinent to the proceedings, irrespective of such communications.
- (b) Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activity 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.
- (c) Notification and required forms to be completed by affected persons, the petitioner and the city.
 - (1) At least 14 calendar days prior to the proceeding, city shall provide a legal advertisement to be published in a newspaper of general paid circulation in Broward County and of general interest and readership in the community, not one of limited subject matter. Said notice shall state the name of the petitioner for the requested action, the date, time and location of the proceeding and the location and times where and when the petition and any back up information may be reviewed. In addition, the notice shall inform all affected persons that they will be allowed to present evidence at the hearing, bring forth witnesses, and cross-examine witnesses provided they notify and file the required forms provided by the city clerk's office, the substance of which is described in subsection (4) below, at least seven calendar days prior to the proceeding.

- (2) No later than 14 calendar days prior to the proceeding, a mail notice containing the same information as the legal advertisement shall be sent to each real property owner within 300 feet of the subject property as each is listed in the records of the county property appraiser. Mail notice may be provided by bulk mail, first class mail or certified mail, return receipt requested.
 - (3) All cost for notification shall be paid by the petitioner.
 - (4) Any affected person desiring to testify, present evidence, bring forth witnesses, or cross-examine witnesses at the proceeding shall complete the required forms provided by the city clerk's office which forms shall at a minimum (i) set forth the affected person's name, address and telephone number which shall serve as notice to the petitioner and city of the affected person's intent to appear at the proceeding to testify, present evidence, bring forth witnesses, or cross-examine witnesses; (ii) set forth the names, addresses and telephone number of all witnesses including consultants or experts to testify on their behalf; (iii) provide copies of all documents, correspondence, memoranda or other evidence the affected person intends to present, use or make reference to during the proceeding; (iv) indicate whether the affected person is for or against the petition; and (v) indicate how the affected person qualifies as an affected person. The required form must be completed and returned to the city clerk's office at least seven calendar days before the proceeding.
 - (5) The petitioner and the city shall also complete the required forms, provided by the city clerk's office, described in subsection (4) above. The completed form shall be returned to the city clerk's office within the time frame set forth in subsection (4) above.
- (d) *Presentation of evidence.*
- (1) All persons testifying before a board or the city commission must be sworn in. The petitioner, members of a board or the city commission and any affected person who has provided notice that it intends to appear at the proceeding shall be given the opportunity to present evidence, bring forth witnesses, and cross-examine any witnesses.
 - (2) All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible, whether or not such evidence would be admissible in a court of law. However, immaterial or unduly repetitious evidence shall be excluded.
 - (3) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding.
 - (4) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, parties shall be given an opportunity to compare the copy with the original.
 - (5) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.
 - (6) The office of the city attorney shall represent the board or the city commission. Any questions as to the propriety and admissibility of evidence shall be

presented to the city attorney's office in a timely fashion.

- (e) *Rights of participants for quasi-judicial proceedings.* The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:
 - (1) To call and examine witnesses;
 - (2) To introduce exhibits;
 - (3) To cross examine opposing witnesses on any relevant matter; and
 - (4) To rebut evidence.
- (f) *Conduct of quasi-judicial proceedings.* To the extent possible, the following shall be the order of the proceedings:
 - (1) Call the proceeding to order and announce the beginning of the proceeding. A majority of the board or city commission members must be continuously present during the proceeding.
 - (2) The matter to be heard and the rules concerning the admissibility of evidence should be announced.
 - (3) Statements of counsel shall only be considered as argument and not be considered as testimony. Counsel for parties shall not be subject to cross-examination. The board or the city commission shall have the authority to refuse to hear any testimony which is irrelevant or repetitive.
 - (4) The chairman of the board or the city commission shall have the option of determining the order of presentation of the parties in order to expedite the proceeding. During its presentation the city shall present any staff; board or other reports on the matter as well as any comments. These reports shall include, but not be limited to, a description of the request of the petitioner; a description/background related to the petition; an analysis which includes the consistency with the city's comprehensive plan, if applicable, and how the petition does or does not meet the requirements of the City Code; a listing of the exhibits to be presented; a listing of potential witnesses; a summarization of the issues; and the staff and board(s) recommendations. These reports shall include specific findings in support of justifying a recommendation for approval or denial of the petition.
 - (5) Petitioner, or his or her representative, shall make a presentation. The petitioner should include a description of the nature of the petition if there is additional information that has not been previously provided to or by the city. In addition the petitioner shall introduce any exhibits and witnesses.
 - (6) Parties who are in support of the petition shall make their presentation. The party shall introduce any exhibits and witnesses.
 - (7) Parties who are in opposition of the petition shall make their presentation. The party shall introduce any exhibits and witnesses.
 - (8) City personnel in attendance shall provide any responses to any other party to the proceeding.
 - (9) After each witness testifies or documents are made a part of the record, a party

shall be permitted to question the witness. The questioning party is not permitted to make any statements, only to ask questions which are directly related to the testimony presented.

- (10) Final presentation by petitioner in response to any testimony from other parties.
 - (11) Final presentation by city in response to any testimony from other parties.
 - (12) The board or the city commission shall deliberate on the petition. No further testimony shall be taken and the members of the board or the city commission shall not ask further questions of persons presenting testimony. The board or the city commission shall discuss the evidence that was presented at the proceeding and vote on the petition.
- (g) *Final determination by board or city commission.* In reaching a determination as whether to grant or deny the petition, the board or city commission shall:
- (1) Consider whether the petition's request is consistent with the city's comprehensive plan, if applicable, and
 - (2) State with specificity the reasons for the approval or denial of the petition. Said approval or denial may by reference incorporate the staff; board or other reports or evidence presented at the proceeding.
 - (3) State whether or not the order is to be recorded in the public records of Broward County and, if applicable, that the cost of recording shall be paid by the petitioner.
- (h) *Preparation of the order.* The city attorney's office shall prepare the final order of the board or city commission based upon the determination. The final order shall include, but not be limited to, the finding of facts, any conditions, requirements or limitations on the approval of the petition, and whether or not the order shall be recorded in the Broward County public records. If an ordinance is required to be adopted upon approval of an action by the city commission, a final order will not be prepared unless the petition is denied.
- (i) *Continuances and deferrals.* If, in the opinion of the board or city commission, any testimony or documentary evidence or information presented at the proceeding justifies providing additional time to allow additional research or review in order to properly determine the issue presented, the board or city commission shall continue the case to a designated time to allow for the additional research or review. After the decision is made to continue, the date to which the proceeding shall be continued shall be announced at the proceeding.
- (j) *Transcription of quasi-judicial proceedings.*
- (1) The official transcript of a proceeding shall be preserved by tape recording or other device by the city clerk's office. Nothing precludes any party from providing a court reporter for the proceeding.
- (k) *Maintenance of evidence and other documents.* The office of the city clerk shall retain all of the evidence and documents presented at the proceeding, except for large scale exhibits which shall be retained by the planning, zoning or building department, all which become a part of the public record of the proceeding.

(l) *Appeal of final determination by board or city commission.* The final determination of the board or city commission is subject to judicial review in a court of competent jurisdiction.

(Ord. No. 764, § 1, 10-24-2000)

Secs. 2-97--2-115. Reserved.