



PERSSON, COHEN, MOONEY, FERNANDEZ & JACKSON, P.A.

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Quasi-Judicial Proceedings: The Rules of Playing Judge and Jury

Presented by:

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Why are we here?

“We will be respectful of one another even when we disagree. We will direct all comments to the issues. We will avoid personal attacks. Politeness costs so little.” - Abraham Lincoln

What Does Quasi-Judicial Mean?

According to the Florida Supreme Court in *BOCC of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993):

- A local government's action are “quasi-judicial” where the decision is one that:
 - Has an identifiable impact on a limited number of persons or property interests;
 - Is contingent on facts arrived at from distinct alternatives presented at the local government hearing; and
 - Can be viewed as policy APPLICATION, rather than policy setting.



What Does Quasi-Judicial Mean? In English:

- Application of previously established criteria to a set of facts and circumstances.
- Quasi-judicial determinations have the force and effect of law.

According to the Courts...

- Local hearing procedures used to debate and decide quasi-judicial land use decisions must honor the expectations of both property owners and the general public that the following procedural requirements will be achieved:
 - Fundamental fairness to all participants;
 - Objective application of the law to the facts presented;
and
 - A reasonable opportunity to be heard on the issue at hand.



Circuit Court Review of Local Government Quasi-Judicial Decisions

- Whether procedural due process was afforded;
- Whether the administrative body applied the correct law; and
- Whether its findings are supported by competent substantial evidence.

What does “Procedural Due Process” require?

- A hearing where evidence and testimony are taken and considered.
 - Must be under oath.
- The applicant and public are given a reasonable opportunity to present the request and rebut information at the hearing.
- The Florida Supreme Court has solely clarified that such hearings DO NOT have to meet the formal rules of evidence.

Ex Parte Communications



- Contacts made by one party to a proceeding with the decision maker outside of the context of the hearing.
- Communications made off the record and intended to influence the decision maker undermine the concept of an impartial, neutral decision maker.

No Ex Parte, No Problems

- Communications with the decision maker prior to a quasi-judicial hearing render the final decision on that matter presumptively prejudicial to those who were not parties to the prior communication.
 - The average constituent is not aware of the difference between a legislative and quasi-judicial matter.
- Discussion are not presumed to be prejudicial to actions taken by the board or commission as long as the proper disclosure is made prior to or at the hearing.
 - However, due process and the right to a fair hearing still apply in quasi-judicial matters. Thus, by publicly taking a position either for or against a quasi-judicial matter prior to the actual hearing date, a quasi-judicial officer subjects himself to being disqualified from taking any official action on the matter.



Am I applying the correct law?

- The decision-making body conducting the hearing must apply the applicable law to the matter at hand.
 - The body must apply the law *as it exists*, rather than how a member or members might LIKE it to be.
- The requirement that the hearing body limit itself to considering facts and apply the law to the matter properly before it is the principal limitation on the quasi-judicial power.
- The applicant will have the burden of proof to demonstrate they meet the applicable criteria.

Substantial, Competent Evidence:

1. Findings of Fact.
2. Expert Testimony.
3. Citizen Testimony.



Citizen Testimony

- Unacceptable Citizen Testimony
- Acceptable Citizen Testimony

Judicial Review by Florida's District Courts of Appeal

The Court's review is limited to solely two
issues:

1. Whether the circuit court afforded procedural due process.
2. Whether the circuit court departed from the essential requirements of law.



Hearing Procedure:

- I. Open the Public Hearing
 - I. Staff Presents
 - II. Applicant Presents
 - III. Proponents
 - IV. Opponents
 - V. Rebuttal
- II. Close the Public Hearing
 - I. Deliberation by the Board or Council

Legislative Hearing Process:

- Board Notice and Public Notice
- Public testimony: consideration of pure preferences and opinions, conjecture and assumptions.
- Substantial discretion: policy-makers.
 - Fairly debatable standard: The Court may not second guess the wisdom of the local government's action, and must affirm if there is any reasonable basis for the decision and that there are no constitutional violations.

Legislative Public Hearings:

- I. Read the Title of the Legislation into the Record
- II. Open the Public Hearing
 - I. Proponents
 - II. Opponents
- III. Close the Public Hearing
- IV. Debate and Decide



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QUESTIONS?

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