

RESOLUTION NO. R-2009- 0512

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, REPEALING RESOLUTION NO R-95-842, AS AMENDED; AND ADOPTING THE COUNTY PROCEDURES FOR CONDUCT OF QUASI-JUDICIAL HEARINGS; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR EFFECTIVE DATE; PROVIDING FOR SEVERABILITY.

WHEREAS, on June 20, 1995, by Resolution R-95-842 the Board of County Commissioners adopted the Procedures for Palm Beach County Conduct for Quasi-Hearings (Procedures) which were amended by Resolution R-2000-1960; and

WHEREAS, it has been determined that the Procedures for the Conduct of Quasi-Judicial Hearings needs to be updated; and

WHEREAS, it is the intent of the Board of County Commissioners that adoption of the updated Procedures, by Resolution complies with Sec. 286.0115, Fla. Stat., authorizing a local government to adopt quasi-judicial procedures by Ordinance or Resolution, thereby removing the presumption of prejudice from ex-parte communications with local public officials during the conduct of quasi-judicial hearings conducted in compliance with these procedures; and

WHEREAS, the procedures shall apply regarding any zoning related quasi-judicial hearings conducted by the Board of County Commissioners and Zoning Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

Section 1. Repeal of Prior Procedures. The Procedures for the Conduct of Quasi-Judicial Hearings adopted by Resolution R. 95-842 and amended by R. 2000-1960 are hereby repealed.

Section 2. Adoption of Procedures. The Palm Beach County Procedures for Conduct of Quasi-Judicial Hearings are hereby adopted as shown on the attached Exhibit A.

Section 3. Purpose and Intent. The purpose and intent of the Quasi-Judicial Procedures as amended are to provide procedures for the conduct of the quasi-judicial proceedings in compliance with Section 286.0115, Fla. Stat., thereby removing the presumption of prejudice for ex-parte communications and providing for due process in the conduct of such hearings.

Section 4. Effective Date. The provisions of this Resolution shall be effective upon adoption.

Section 4. Severability. Should any section, paragraph, sentence, clause or word of this Resolution be held to be unconstitutional, inoperative or void, such holding shall not affect the validity of the remainder of the Resolution.

The foregoing Resolution was offered by Commissioner Burt Aaronson, who moved its adoption. The motion was seconded by Commissioner Vana, and upon being put to a vote, the vote was as follows:

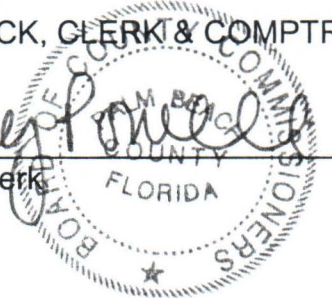
Commissioner John F. Koons, Chairman	-	Aye
Commissioner Burt Aaronson, Vice Chairman	-	Aye
Commissioner Karen T. Marcus	-	Aye
Commissioner Shelley Vana	-	Aye
Commissioner Steven L. Abrams	-	Aye
Commissioner Jess R. Santamaria	-	Aye
Commissioner Addie L. Greene	-	

The Chairman thereupon declared the Resolution duly passed and adopted this 2nd day of April, 2009.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: *Sharon R. Bock*
Deputy Clerk



APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: *[Signature]*
County Attorney

Palm Beach County Procedures for Conduct of Quasi-Judicial Hearings

1. DEFINITIONS:

- A. Applicant - the owner of record, or owner's agent, or any person with a legal or equitable interest in the property that is the subject of the proceeding.
- B. Commission - the Board of County Commissioners, Zoning Commission, or any other board to which this policy is made applicable.
- C. Commissioners- Members of the Board of County Commissioners, the Zoning Commission or any other board to which this policy is made applicable.
- D. Ex parte communications - any written or oral communication with Commission members other than those made on the record at the time of the hearing.
- E. Participants - those members of the general public other than the applicant who attends a public hearing for the purpose of being heard on a particular application.
- F. Relevancy - In order to be relevant, the evidence submitted must strengthen or weaken the application by supporting or disproving factual assertions contained in the application or must relate directly to the application. The Commission shall determine the relevancy of evidence.
- G. Witnesses - County staff members, representatives of the applicant, and participants who testify at the hearing.

2. GENERAL STANDARDS:

- A. Ex Parte Communications between Commission Members and Public. Applicants, participants and other members of the general public may communicate freely with Commission members regarding any issue which may be heard by the Commission.
- B. County Staff Report. The staff report on the case shall be sent to the Commission members and be available to the general public at least five (5) days prior to the hearing on the case.
- C. Appearances and Evidence.
 - 1. Persons claiming to represent a group or organization must demonstrate proof of membership of that group and proof that the person representing the group has actual authority to do so.

2. All participants must complete a public comment card, prior to the commencement of the agenda item on which they wish to speak.
3. COMMUNICATIONS BETWEEN COMMISSIONERS AND COUNTY STAFF.
 - A. Communications between Commissioners and County staff are permitted subject to the disclosure requirements in these rules.
 - B. Attorneys for the Commission may render legal opinions when requested by the Commission members, but shall not advocate one party's position over another, except to the extent necessary to respond fully to a legal question.
4. EX-PARTE COMMUNICATIONS.
 - A. Written Communications. A Commissioner may read a written communication from any person. However, a written communication that relates to quasi-judicial action that is pending before the Commission shall not be presumed prejudicial to the action and such written communication shall be made part of the record before final action on the matter.
 - B. Oral Communications. Oral communication is permitted. The substance of any ex-parte communication with a Commissioner 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 part of the record prior to final action in the matter.
 - C. Investigations, Site Visits and Expert Opinions. Commissioners may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial matters 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 part of the record before final action on the matter.
5. COUNTY STAFF FILE.

All written communications shall be included in the file maintained by staff and available for public inspection. Any communication received by staff shall be reported as part of the oral staff report. The staff report, any petitions or other submissions from the public, and all other documents pertaining to the case shall also be kept in the file and available for public inspections. During its presentation, staff shall offer all such written communications from the public into evidence, subject to any objections interposed by participants.

6. DISCLOSURE.

At the public hearing at which a vote is to be taken on a matter, a Commissioner who has received an ex parte communication, conducted an investigation, received expert opinions or has physically inspected the property, shall

- A. disclose the subject of the oral communication and the identity of the person, group or entity with whom the communication took place;
- B. make written communications that were read by the Commissioner part of the record; and
- C. disclose the existence of investigation and site visits made by the Commissioner and expert opinions received by the Commissioner.

7. BASIS OF DECISION.

All decisions by the Commission shall be based on the record of the evidence presented to the Commission at the hearing on the case, which shall include testimony of all witnesses, and other evidence presented. Strict rules of evidence shall not apply, but evidence must be relevant to the issues before the Commission.

8. CONDUCT OF HEARING.

The procedure at the hearing shall be as follows:

- A. The Board adopts the agenda including staff reports which are attached to and referenced by page numbers on the agenda. Participants may raise objections to a staff report during the hearing for a particular item.
- B. The County staff presents its report and offers correspondence not attached to the agenda into evidence and offers any other documents from the staff file it deems appropriate into evidence;
- C. Commission members shall make disclosures per paragraph 6 a.-c. above ;
- D. The applicant presents its case and/or responds to or refutes any ex parte communication;
- E. Participants present their case and/or respond to or refute any ex parte communications;

- F. Upon request, county staff, the applicant, or designated representatives of the participants may cross-examine witnesses;
- G. Commission discusses and makes decision pursuant to step 12.

Commission members may interpose questions at any time during the conduct of the hearing.

9. TESTIMONY UNDER OATH OR AFFIRMATION.

The applicant, witnesses and all participants asking to speak shall be sworn collectively at the beginning of the hearing.

10. CROSS-EXAMINATION.

- A. All witnesses are subject to cross-examination during the hearing.
- B. Cross-examination of each witness shall be limited to two (2) minutes. The chairperson shall enlarge the time period allowed for cross-examination when necessary to ensure due process is provided.
- C. The scope of the cross-examination shall be limited to the facts alleged by the witness in relation to the application.
- D. The cross-examination cannot be designed to merely harass, intimidate or embarrass the witnesses.
- E. The chairperson of the Commission will determine the scope of the cross-examination on his or her own initiative, or when the individual being questioned objects to the cross-examination for going beyond the scope of the facts alleged by the witness.
- F. The chairperson of the Commission may defer to the County Attorney to determine the scope of the cross-examination.
- G. The chairperson of the Commission may direct the party conducting the cross examination to stop a particular line of questioning that is not relevant and beyond the scope of the facts alleged by the witness being cross-examined.
- H. If the party conducting the cross-examination continuously violates directions from the chairperson to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the witness, the chairperson may terminate the cross-examination.

11. TIME LIMITS.

- A. Applicant – Up to thirty (30) minutes.
- B. Participants –
 - 1. Members of public – three (3) minutes each.
 - 2. Speakers representing a group of six (6) or more in attendance at the meeting five (5) minutes each.
 - 3. Speakers representing an organization – five (5) minutes each
- C. Expert witnesses – ten (10) minutes.
- D. At the discretion of the chairperson of the Commission, the time allowed for any testimony may be reduced or extended.

12. DECISION BY THE COMMISSION.

At the close of the public hearing, the Commission shall make a decision on the application. The Commission shall:

- 1. Approve
- 2. Approve with conditions
- 3. Deny-with or without prejudice
- 4. Continue the hearing to another date and time.

In the event of a tie vote, the hearing shall be continued to the next hearing date.

13. RECORD OF THE CASE.

All evidence admitted at the hearing, County staff reports, and the adopted resolution setting forth the decision of the Commission, shall be maintained in a separate file constituting the record of the case. The record shall be kept in the custody of the appropriate staff at all times during the pendency of the case, except that any member of the public may examine the file in the appropriate County staff office.

14. APPLICABILITY.

Board of County Commissioners

These rules shall apply to all site specific rezoning, conditional use proceedings, Development Order Amendments, status reports and any time the Board of County Commissioners sits in an appellate capacity.

Zoning Commission

These rules shall apply to all site specific rezoning, conditional use proceedings, Development Order Amendments, status reports, variance requests and any time the Zoning Commission sits in an appellate capacity.