

Quasi-Judicial Decision Making

City of Fort Pierce

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AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

Today's Presentation

- The Difference Between Legislative and Quasi-Judicial Hearings and Decisions
- Characteristics of Quasi-Judicial Decisions
 - Standards of Review and Burdens of Proof
 - Hearing Procedures and Parties
 - Substantial Competent Evidence
- Ex Parte Communications and Quasi-Judicial Bias
- Protected Classes
- Exactions and Conditions of Approval
- Examples of Quasi-Judicial Decisions Made by Fort Pierce City Commission: Conditional Uses and Rezonings
- Best Practices

LEGISLATIVE AND QUASI JUDICIAL DECISIONS



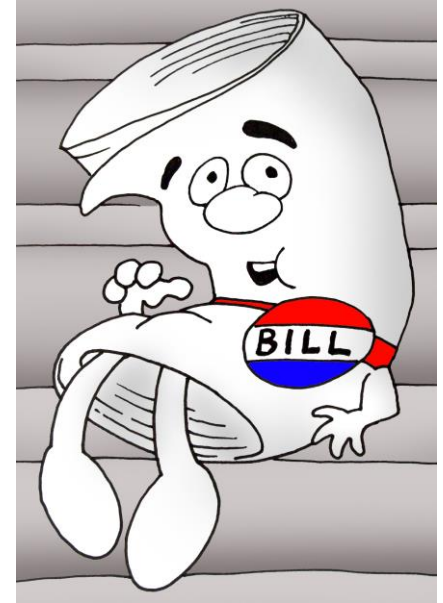
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- **Setting Policy**

- Adopting or amending the Comprehensive Plan
- Includes small-scale plan amendments
- Adopting or amending Land Development Regulations (LDRs)

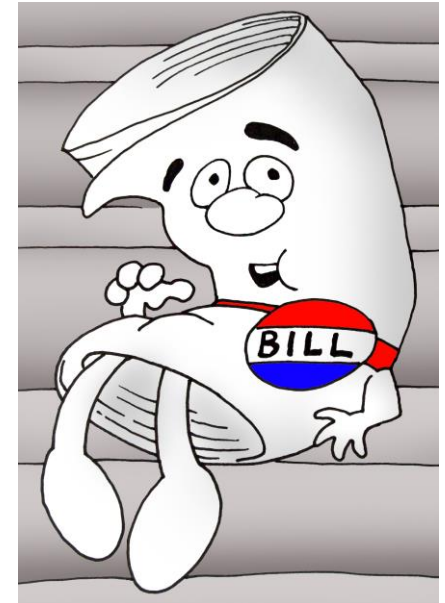


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**LEGISLATIVE
DECISIONS**

- **Legislative Hearing**

- Broad notice
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Commission as lawmakers
- Can take a position ahead of the hearing - *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3rd DCA 1984).

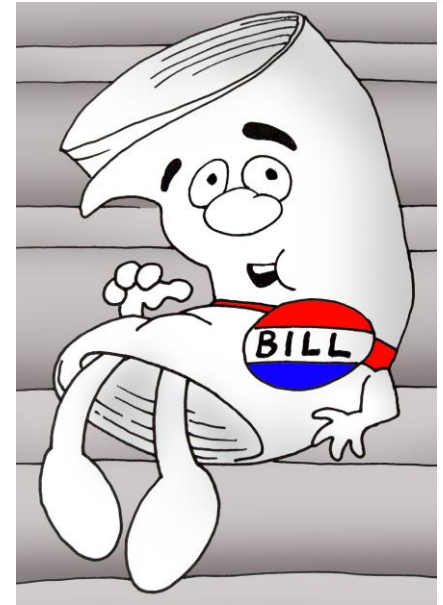


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**LEGISLATIVE
DECISIONS**

- **Fairly Debatable Standard of Review**

- Relaxed and tolerant standard of rationality. There must be a reasonable basis to support the action
- The fairly debatable standard is a very deferential 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 there are no constitutional violations

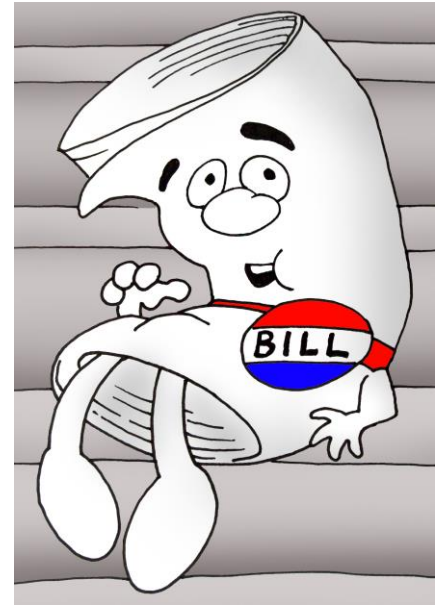


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**LEGISLATIVE
DECISIONS**

Fairly Debatable Standard of Review

- Legislative findings may be based on rational speculation unsupported by evidence or empirical data. Can legislate as an experiment, with no proof of efficacy.
- De Novo review. If the decision is challenged, the City has the opportunity to create additional evidence to support it – additional studies, expert testimony, etc. Heavy burden of proof on the challenger.



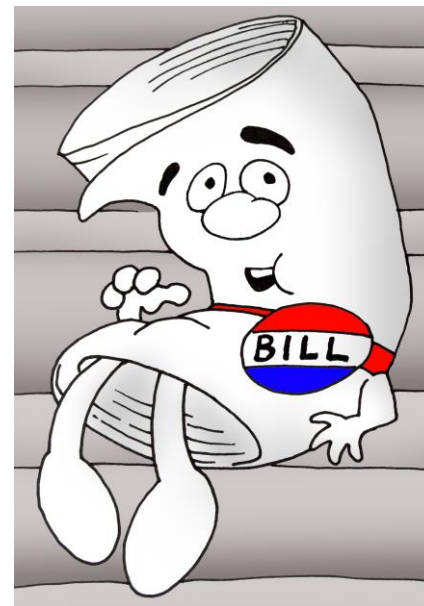
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**LEGISLATIVE
DECISIONS**

Fairly Debatable Standard of Review

Membreno v. City of Hialeah, 188 So. 3d 13
(Fla.3rd DCA 2016)

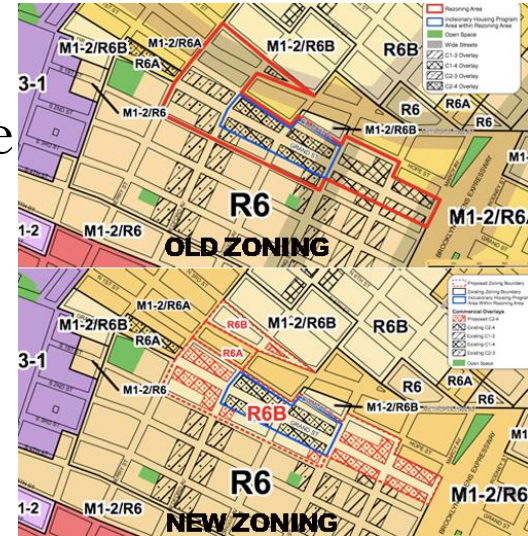
- Essential to separation of powers, and highly deferential to the legislature's choice of means and ends
- Requires that it is at least debatable that a rational relationship exists between the regulation and a legitimate governmental purpose.
- If we are intellectually honest, we will admit that most legislation easily passes this test.



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**LEGISLATIVE
DECISIONS**

- Focus: Notice to owner and affected persons.
- Applicant and affected parties entitled to more than the 3 minute rule because their rights are uniquely affected.
- Two key elements:
 - the finding of facts regarding the specific proposal
 - the exercise of judgment and discretion in applying predetermined policies to the situation
- Commission acting as judges



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**QUASI
JUDICIAL
DECISIONS**

Affected Persons?

Objectors With Standing to Sue

Renard v. Dade County, 261 So. 2d 832 (Fla.1972)

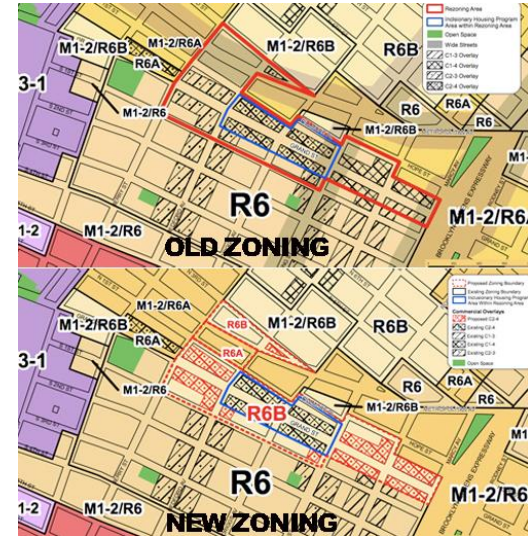
- A person who has a **legally recognizable interest** which is or will be affected by the action of the zoning authority in question has standing.
- **May be shared in common with other members of the community** (an entire neighborhood), but not every resident and property owner of a municipality can, as a general rule, claim such an interest.
- **Must be a definite interest exceeding the general interest** in community good shared in common with all citizens.
- So-called "spite suits" will not be tolerated in this area of the law any more than in any other.
- Relevant factors:
 - **proximity** of his property to the property to be zoned or rezoned,
 - the **character of the neighborhood**, including the existence of common restrictive covenants and set-back requirements
 - the **type of change** proposed
 - **entitlement to receive notice** under the zoning ordinance is a factor to be considered on the question of standing to challenge the proposed zoning action, but is **not controlling**. Persons having sufficient interest to challenge a zoning ordinance may, or may not, be entitled to receive notice of the proposed action under the zoning ordinances of the community.

- Decisions by the City in a quasi-judicial capacity are subject to narrow and limited review by **certiorari** on the record in Circuit Court:

- Whether procedural due process was accorded;
- Whether the essential requirements of the law have been observed; and
- Whether the decision is supported by competent substantive evidence

- Petitions for writ of certiorari must be filed **within 30 days** of rendition of the development order to be reviewed. Cannot be extended.

- Rendition = filing of final, executed development order or denial with the Clerk. Denials must cite to the legal authority for the decision – see Section 166.033, Fla. Stat.



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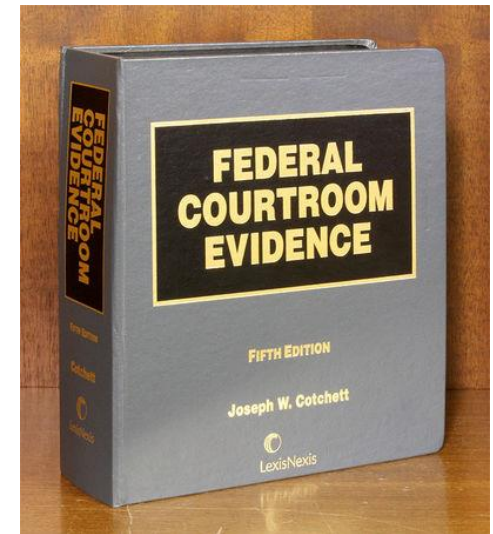
Burdens of Proof for Quasi-Judicial Approvals

Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder, 627 So. 2d 469, 476 (Fla. 1993).

- The **burden is upon the landowner** who challenges the denial of a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate that the application **complies with the reasonable procedural requirements** of the applicable ordinance and that the use sought is **consistent with the applicable comprehensive plan**.
- The **burden then shifts to the government** to demonstrate that maintaining the existing zoning classification on the property **accomplishes a legitimate public purpose, and is not arbitrary, discriminatory, or unreasonable**.
- Quasi-judicial decisions generally are based on their facts and do not set precedents. Relevant: changed conditions, changed applications.

- Whether the decision is supported by **competent substantive evidence** = Evidence a reasonable mind would accept as adequate to support a conclusion

Official Town records (charter, code, ordinances)	Application materials submitted by applicant
Expert testimony	Fact based citizen testimony
Actions previously taken by other reviewing boards	Pictures, photographs, and all staff reports



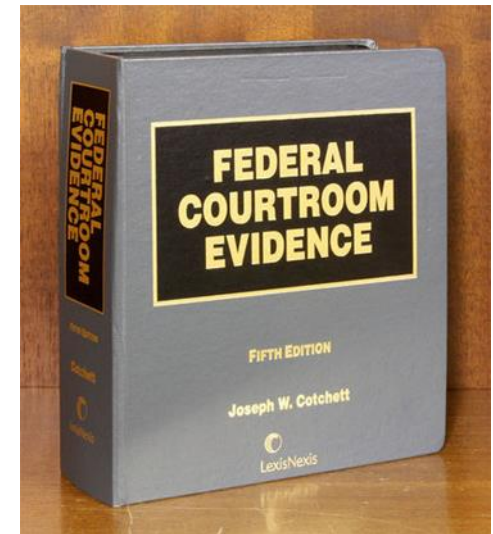
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- Substantial Competent Evidence from lay witnesses/ **residents** must be “fact based”
 - Subjective preferences (“love it” “hate it”) are **not** fact based and do not constitute Substantial Competent Evidence
 - Conjecture or assumptions are irrelevant to the issues

**QUASI
JUDICIAL
DECISIONS**

Example:

- If you want to find that property values in the neighborhood will be harmed by a proposed project, you must base your conclusion on record evidence rather than your gut.
 - testimony from an appraiser about the impacts of a similar project
 - Is it truly similar?
 - Does the record reflect that, or are you just relying on your knowledge of the area? Need to state/show what may be obvious to local citizens, so that a reviewing court can see that evidence supports your conclusion.
 - presentation of facts that would allow a reasonable person to conclude property values would go down
 - property owners testifying in detail about personal knowledge of the appraisals or sales prices or cancelled sales contracts resulting from similar development or from the pending application
- Relevant personal knowledge must be explained if it is to form the basis of your motion or vote



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**EVIDENCE
FOR
QUASI
JUDICIAL
DECISIONS**

Jennings v. Dade County, 589 So.
2d 1337 (Fla. 3d DCA 1991)

Proper procedures for quasi-
judicial decisions

- Notice
- Presentation of evidence
- Hearing before a neutral (un-
biased) decision maker



QUASI
JUDICIAL
HEARINGS

Jennings v. Dade County, 589 So.
2d 1337 (Fla. 3d DCA 1991)

Evidence –

- All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible.
- **Immaterial** or unduly **repetitious** evidence shall be excluded.
- **Hearsay** evidence (a statement about the facts made by someone who is not present and available for cross-examination) can supplement or explain other evidence, but is not sufficient by itself to support a finding. Consider credibility and weight.
- Statements by **counsel** are argument, not testimony.



- **Opinion** evidence generally should be offered only by a properly qualified expert witness. Lay experts.

**QUASI
JUDICIAL
EVIDENCE**

Jennings v. Dade County,

589 So. 2d 1337 (Fla. 3d DCA 1991)

- Sworn testimony – swear or affirm
 - Reminds witnesses of the seriousness of the matter and the necessity of presenting factual information, not opinions or speculation.
 - All at once, or one at a time.
 - A person who deliberately gives false testimony under oath could be subject to criminal charges for perjury.
- Questioning of witnesses – can regulate abuse and length
- Parties (City, applicant, affected persons) have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any relevant matter, and rebut evidence



**QUASI
JUDICIAL
HEARING**

EX PARTE COMMUNICATIONS AND QUASI-JUDICIAL BIAS

Ex-parte communication

- An ex parte communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with a commissioner about the issues in the case **without the other parties' knowledge**.
- Example: the prosecutor meets with the judge about the case, without the public defender present. A commissioner meets with the applicant or an opponent without the public present.



- **Attributes of ex-parte communications on local quasi-judicial matters:**

- Occurs outside the official hearing
- Usually one-sided (opposition or support)
- Does not allow the other side an opportunity to respond
- Can be in any form – written, verbal, electronic, etc.

- *Jennings*: Opponents must have an opportunity to respond

- **Implications**

- Allowed?
- Need to declare?
- Prevents you from participating or voting?



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**EX PARTE
IN QUASI
JUDICIAL
DECISIONS**

Statute creates local choice

Section 286.0115, Florida Statutes “Access to local public officials; quasi-judicial proceedings on local government land use matters.”

- A ... municipality **may** adopt an ordinance or resolution **removing the presumption of prejudice from ex parte communications** with local public officials **by establishing a process to disclose** ex parte communications with such officials pursuant to this subsection or by adopting an alternative process for such disclosure. . . .”
- When this procedure is followed, the presumption of prejudice is removed
- Fort Pierce has adopted such an ordinance:



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**EX PARTE
IN QUASI
JUDICIAL
DECISIONS**

- Your ordinance, pursuant to statute, provides that ex-parte communications are **not presumed prejudicial if disclosure is made** before or during the public meeting.
- Must disclose the following information for the record:
 - The subject of the communication and the identity of the person, group or entity with whom the communication took place
 - Written communications should be submitted into the record
 - Disclose the existence and nature of any investigations, site visits and expert opinions received

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**EX PARTE
IN QUASI
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DECISIONS**

City Code Sec. 2-18. - Disclosure of ex-parte communications.

(a) Any person not otherwise prohibited by statute, charter provision or ordinance may discuss with any city commissioner the merits of any matter on which action may be taken by the city commission.

(b) The adoption of the procedure set out in this section shall **remove the presumption of prejudice** arising from ex-parte communications with city commissioners.

(c) The substance of any ex-parte communication with a city commissioner which relates to a quasijudicial action pending before the city commission is not presumed prejudicial to the action **if the subject matter of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record before final action** on the matter.

(d) A city commissioner may read a written communication from any person. However, the written communication that relates to quasijudicial action pending before the city commission shall not be presumed prejudicial to the action and **such written communication shall be made a part of the record** before final action on the matter.

(e) City commissioners **may conduct investigations and site visits and may receive expert opinions** regarding quasijudicial actions pending before the city commission. Such activities 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.

(f) Disclosure made pursuant to the above paragraphs must be made **before or during the public meeting at which a vote is taken** on such matters so that persons who have opinions contrary to those expressed in the ex-parte communication are given a **reasonable opportunity to refute or respond** to the communication. This section does not subject the city commissioners to part III of Chapter 112, Florida Statutes, for not complying with this subsection.

Meaning of Section 2-18:

- The City has elected to allow ex parte communications and require disclosure in accordance with the statute. If properly disclosed before or during the meeting at which the vote is taken on the matter, such communications will not be presumed to be prejudicial, and will not prevent a commissioner from being able to vote on the matter.
- Commissioners must disclose the substance, subject matter, and persons involved in any oral ex-parte communication which relates to a quasi-judicial action pending before the city commission on the record.
- Written communications are disclosed by making them a part of the record.
- Commissioners may conduct investigations and site visits, and may receive expert opinions regarding quasi-judicial actions pending before the city commission. These must also be made a part of the record.
- Persons who have opinions contrary to those expressed in the ex-parte communications must be given a reasonable opportunity to refute or respond to any disclosed ex parte communication.



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**EX PARTE
IN QUASI
JUDICIAL
DECISIONS**



"I'm recusing myself from this case."

QUASI JUDICIAL BIAS



QUASI JUDICIAL BIAS

- Bias (**a predetermined opinion that is not susceptible to change**), undisclosed ex parte communications, and close family or business ties can **disqualify Commissioners from participating or voting** as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect **impartial decision-making on the basis of the evidence presented**. Decision-makers should **not take a position** on a quasi-judicial application until each party (City, applicant, affected person) has made its presentation at the hearing. Doing so deprives a party of its constitutionally protected right to a fair hearing.
- Commissioners should **not** actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action. To do so could subject the City and the individual Commissioner to a lawsuit.

**QUASI
JUDICIAL
BIAS**

- Examples of litigation over quasi-judicial bias
 - “Disquieting in our search was the revelation that a Commissioner **telegraphed his decision before considering the information upon which the decision was to be made.** We think that was a questionable departure from the fundamental fairness which should prevail when any governing body considers a citizen's request.” *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (18th Cir. Ct. 1991) (denial of rezoning based on resident opposition)
 - *Edelstein v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 89 (Fla. 11th Cir. Ct. April 7, 1995) (**campaign promises to support a downzoning** in advance of the hearing)

QUASI
JUDICIAL
BIAS

- “[a]t the Board hearing **before any evidence was received, [the district] County Commissioner ... moved for denial** of the Petitioner's rezoning request which would give some cause to question the Commissioner's impartiality on the issue before the Board.” *ABC Ventures, Inc. v. Board of County Commissioners of Brevard County*, Case No. 95-8041-AP (Fla. 18th Cir. Ct. January 1996) (members of church across the street opposed rezoning for site of liquor store)
- Strip club occupational license revocation hearing – **mayor campaigned against use and accused it of illegal activities prior to the hearing**, and City Manager acted as prosecutor – denial of adequate cross exam and other irregularities in how Mayor conducted the hearing, so injunction granted. *Seminole Entertainment, Inc. v. City of Casselberry*, 811 So.2d 693 (Fla. 5th DCA 2001)
 - There must be an **orderly and fair** procedure. Technical legal rules of evidence and procedure may be disregarded, but **no essential element of a fair trial can be dispensed with unless waived**. . . . The presiding official should be **judicial in attitude and demeanor and free from prejudice and from zeal for or against** the licensee or permittee . . .” citing 9 McQuillin, *Municipal Corporations* §26.89 (3rd ed.).”

QUASI
JUDICIAL
BIAS

Voting Conflict of Interest Statute Allows Recusal for Quasi-Judicial Bias

- Section 286.012, Fla. Stat. **Voting requirement at meetings of governmental bodies.**—A member of a ... municipal governmental ... commission... who is present at a meeting of any such body at which an official decision... is to be taken or adopted **may not abstain from voting** in regard to any such decision...; and a vote shall be recorded or counted for each such member present, **unless**, with respect to any such member, there is, or appears to be, a possible **conflict of interest** If there is, or appears to be, a possible conflict. . ., the member shall comply with the disclosure requirements of s. 112.3143.... **If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.**

HEARINGS AND DECISIONS INVOLVING PROTECTED CLASSES

Decisions Affected Protected Classes

- Fair Housing Amendments Act (FHAA) and Americans with Disabilities Act (ADA)
- Seven protected classes: Race, ethnicity, national origin, religion, sex, familial status, and disability
- Disability: A person who:
 - Has a physical or mental impairment that substantially limits one or more major life activities
 - Or has a record of such impairment
 - Or is regarded as having such an impairment

See, e.g., *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008); *Caron Foundation of Fl. v. City of Delray Beach*, 879 F. Supp. 2d 1353 (S.D.Fla. 2012); *Jeffrey O. v. City of Boca Raton*, 511 F.Supp.2d 1339 (S.D.Fla.2007).

Liability for Decisions Affecting Protected Classes

- Disparate treatment: Policies and decisions that explicitly discriminate or applied in a discriminatory way
 - Zoning for a hospital or nursing home, but zoning out inpatient drug treatment facilities
 - Allowing unrelated persons to live together, but prohibiting sober homes
 - Enforcing a facially neutral ordinance in a discriminatory way
 - Passing a facially neutral ordinance with a discriminatory purpose or in reaction to public sentiment
- Disparate impact: Neutral policies that have the effect of discriminating
 - Facially neutral policy or practice having an unjustified discriminatory effect regardless of whether there was intent to discriminate
 - Challenger must identify a facially neutral policy causing a disparate impact
 - Statistical discrepancy is not enough, and quotas should be avoided
 - The government can defend itself based on valid governmental interests

Liability for Decisions Affecting Protected Classes

- Failure to reasonably accommodate or to have a reasonable accommodation policy
 - Statutorily established method under ADA & FHAA
 - Allows disabled person (or provider of services to disabled persons) to seek modification or alteration in application of a specific code provision, rule, policy or practice
 - Must be reasonable and necessary to afford disabled persons an equal opportunity to enjoy the same benefits as a non-disabled person
 - A request for a reasonable accommodation must be responded to promptly
- Applicant must demonstrate:
 - Disability
 - How accommodation is reasonable and necessary
 - That accommodation does not fundamentally alter City's zoning scheme
- Cannot enforce regulation or ordinance while request or appeal is pending

EXACTIONS AND CONDITIONS OF APPROVAL

Exactions

An exaction is a development approval requirement that a land owner or developer provide a public improvement at its own expense. Typical forms of exactions include:

- Dedication of land for streets and utility easements
- Construction of specified public improvements, such as roads, sidewalks, water and sewer lines
- Dedication of land for open space
- Dedication of land and construction of facilities for parks
- Setting aside land for future government purchase for school sites

Key legal issues:

- Is the exaction **sufficiently related to the impacts** of the project that are asserted as the justification for the exaction?
- Is the **amount** of the exaction constitutional?
- Determined on a **case-by-case basis**. Compare legislative impact fees.

Exactions and Conditions of Approval

Nollan v. California Coastal Commission

(US Supreme Court – 1987)

Coastal easement

**Rational Nexus =
Related to impact
created by the
development**



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Dolan v. City of Tigard, Ore.

(US Supreme Court – 1994)

Bike path easement

**Rough Proportionality =
Required actions mitigate
the impact, and benefit
the development**



Exactions and Conditions of Approval

Koontz v. St. Johns River Water Management District (US 2013) (wetland mitigation):
Nollan/Dolan applies to denials and to monetary conditions

Codified at Section 70.45, Fla. Stat., for exactions imposed after Oct. 1, 2015. Requires written claim to gov't and gov't response prior to litigation. Burden on gov't to prove *Koontz* standard is met; plaintiff proves damages.

Compare Florida caselaw of “dual rational nexus” developed for impact fees

EXAMPLES OF QUASI-JUDICIAL APPROVALS

CONDITIONAL USES

REZONINGS

Conditional Uses

- A **special exception** or **conditional use** seeks permission to do something that the zoning ordinance permits only under certain special circumstances. The Code might:
 - Allow a retail store over a certain size in the zone only if certain parking, drainage and design criteria are met
 - Allow a use from a more intense zoning district in the zone as a conditional use if conditions of approval are imposed to mitigate the impacts
- The standards must provide sufficient guidance for deciding whether to grant. The applicant, the neighbors, the commission, and a court reviewing the decision all need to know what the Code requires for approval.
- If you meet the objective Code criteria for the special exception or agree to the condition and are consistent with the Plan, you can get approval and it becomes a legal use for the property as long as you remain in compliance
- In contrast, a **nonconforming use** was legal when established, but is now illegal under the code and is constrained in its ability to grow without coming into compliance with the Code.

Conditional Uses

- Conditions must not be arbitrary. When the entire record supported approval of a school with enrollment of 1150 students, but the approval was limited to 900 students without a basis in substantial competent evidence or in a Code requirement, the approval was overturned. *Village of Palmetto Bay v. Palmer Trinity Private School, Inc.* (Fla. 3rd DCA 2012). See also Section 70.45, Fla. Stat., re excessive conditions.
- Challengers: Once a special exception applicant demonstrates consistency with a zoning authority's land use plan and meet code criteria, the decision-making body may deny the request only where "the party opposing the application . . . show[s] by competent substantial evidence that the proposed exception does not meet the published criteria." *Fla. Power & Light Co. v. City of Dania*, 761 So. 2d 1089, 1092 (Fla. 2000).

Conditional Uses in Fort Pierce

Sec. 22-74. - Purpose.

The purpose of the conditional use process is to **allow, when desirable, uses that would not be appropriate generally or without restriction** throughout the particular zoning district, but **which, if controlled** as to number, area, location or relation to the neighborhood, **would not adversely affect** the public health, safety, comfort, good order, appearance, convenience and the general welfare.

Sec. 22-78: A use which is permitted as a conditional use in a district under the terms of this chapter shall **not be deemed a nonconforming use** in this district, but shall without further action be considered a conforming use.

Sec. 22-79. - Compliance with conditions of approval.

Compliance with conditions established for a conditional use and adherence to the submitted plans, as approved, is required. Any departure from these conditions of approval and approved plans constitutes a violation of this chapter. A change in tenancy, ownership or management of a conditional use shall not affect the status of a conditional use which remains otherwise unchanged nor be interpreted to permit a departure from the conditions of approval and the approved plans.

Rezoning

- Sometimes, the local government will propose to change the zoning district of entire areas, or even the whole jurisdiction. Comprehensive rezonings are legislative.
- A property owner can apply to change the zoning district applicable to his or her property to another district that is also consistent with the comprehensive plan land use designation, which is quasi-judicial.
- If there are criteria in the Code for the grant of a rezoning, the governing body must follow them, and cannot base its decision on findings of general compatibility or economic benefit. *Alvey v. City of North Miami Beach, Fla.* (Fla. 3rd DCA 2016).
 - "[T]hose who own property and live in a residential area have a legitimate and protectable interest in the preservation of the character of their neighborhood which may not be infringed by an unreasonable or arbitrary act of their government." *Allapattah Cmty. Ass'n*, 379 So. 2d at 392. Zoning ordinances are enacted to protect citizens from losing their economic investment or the comfort and enjoyment of their homes by the encroachment of commercial development by an unreasonable or arbitrary act of their government."

Issues in Rezoning

- Zoning decisions must be based on the zoning category, not a particular proposed use
 - A zoning authority's insistence on considering the owner's specific use of a parcel of land constitutes not zoning but direct governmental control of the actual use of each parcel of land which is inconsistent with constitutionally guaranteed private property rights. *Palmer Trinity Sch., Inc. v. Village of Palmetto Bay*, 31 So. 3d 260 (Fla. 3rd DCA 2010).
- Line drawing is essential to zoning, and is not necessarily arbitrary: “lines of demarcation between zones must be placed somewhere and that there is no force to the argument that property situated on one side of a street need by proximity alone be put in the same zone with property on the other side.” *City of Miami Beach v. Ocean & Inland Co.*, 147 Fla. 480, 3 So.2d 364 (Fla. 1941).

Issues in Rezoning

- **Spot zoning:**
 - “the use of a portion of the building for stores or other business enterprises would violate the integrity of the district and plant therein a growth which could well spread and destroy the character of the neighborhood. It would constitute spot zoning of the worst order, a practice which we and all other courts have universally condemned.” *Parking Facilities v. City of Miami Beach*, 88 So. 2d 141 (Fla.1956)
 - “the piecemeal rezoning of small parcels of land to a greater density, leading to disharmony with the surrounding area. Spot zoning is usually thought of as giving preferential treatment to one parcel at the expense of the zoning scheme as a whole.” *Bird-Kendall v. Dade County Comm'rs*, 695 So. 2d 908 (Fla. 3rd DCA1997)
- **Reverse spot zoning** occurs when a zoning ordinance prevents a property owner from utilizing his or her property in a certain way, when virtually all of the adjoining neighbors are not subject to such a restriction, creating in effect, a veritable zoning island or zoning peninsula in a surrounding sea of contrary zoning classification. Reverse spot zoning is invalid, as it is confiscatory. *Tollius v. City of Miami*, 96 So. 2d 122 (Fla. 1957).

BEST PRACTICES

Best Practices for Quasi-Judicial Decisionmaking

- **BE AN OBJECTIVE DECISION-MAKER**
 - Do not prejudge the case and avoid making up your mind beforehand.
 - Provide objective decisions based on all the facts in evidence presented.
 - Follow your community's plan and the local zoning codes, and local land development codes
 - Base decision on the information available to you at the meeting, including the staff report, the site visit, relevant information presented at the meeting, and public comment.
- **MAKE THE BEST DECISION POSSIBLE BASED ON ALL OF THE INFORMATION PRESENTED TO YOU**



Best Practices for Quasi-Judicial Decisionmaking

- BE AN EFFECTIVE COMMISSIONER
 - Prepare well for the meetings
 - Keep the meeting tempo the same at the beginning and end
 - Seek to understand each other's positions and opinions
 - Be civil to each other so the public will be civil to you
 - Have a bias for action
 - Explain your rationale, but don't lecture
 - Make your final action clear to the public



Photo Credit: NBC, Parks and Recreation TV Series

Best Practices for Quasi-Judicial Decision Making

MAKE SOUND DECISIONS & DEFENSIBLE MOTIONS

- Ask applicant if he/she agrees. If not, why not? Verify understanding and assumptions before voting. Allow rebuttal as needed.
- Restate and discuss criteria to support the motion.
- Follow competent substantial evidence, not the Roar of the Crowd
- Repeat the “gift wrapped” motion provided by staff if you agree
- Motions different than staff-recommended motion
 - Develop defensible public record based on evidence in the record
 - May not be arbitrary
 - Denials must provide a reason, in writing, to the applicant

Best Practices for Quasi-Judicial Decision Making

Adding Conditions of Approval?

- Make sure they do not overlap or conflict with the staff-recommended conditions
- Related to the criteria for approval
- Rational nexus
- Rough proportionality
- Section 70.45, Fla. Stat., exposure

Questions?

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