CITY OF FORT PIERCE, FLORIDA

PUBLIC MEETINGS & QUASI JUDICIAL HEARINGS

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A Public Trust

Guiding Constitutional Principle

The Office You Hold is a Public Trust

A public office is a public trust. The people shall have the right to secure and sustain that trust against abuse.

Fla. Const. Art. II, section 8

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A Public Trust

Guiding Constitutional Principle

The Office You Hold is a Public Trust

It is hereby declared to be the policy of the state that no officer or employee of a . . . political subdivision of the stat . . . shall have any interest, financial or otherwise, direct or indirect; engage in any business transaction or professional activity; or incur any obligation of any nature which is in substantial conflict with the proper discharge of his or her duties in the public interest. *Fla. Stat. 112.311 (5)*

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Guiding Constitutional Principle

CONFLICT OF INTEREST

A situation in which regard for a private interest tends to lead to disregard of a public duty or interest - *Fla. Stat. 112.312 (8)*

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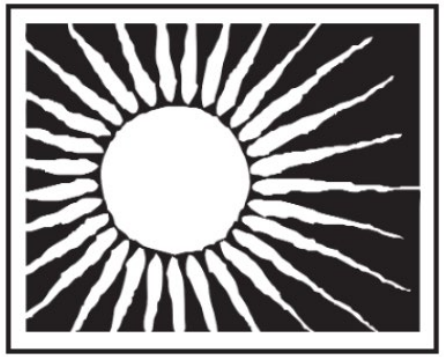
FLORIDA'S PUBLIC MEETINGS LAWS

THE SUNSHINE LAW: GENERALLY



"If the broad light of day could be let in upon men's actions, it would purify them as the sun disinfects."

- *Letter of Louis D. Brandeis*

"Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants . . ."

- Louis D. Brandeis, "What Publicity Can Do", Harper's Weekly (Dec. 20, 1913)

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BASIC COMPLIANCE REQUIREMENTS

- Notice
- Location
- Public Participation
- Minutes

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What is a Public Meeting

Open Meetings: A Constitutional Duty

Florida Constitution

All meetings of any collegial public body of . . . a municipality . . . at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public . . . except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution (*Article I, section 24 (b)*)

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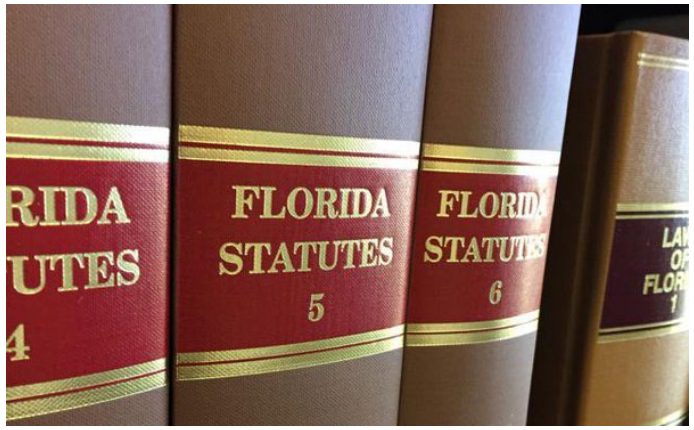
What is a Public Meeting

Open Meetings: A Statutory Duty



All meetings of any board or commission of . . . any . . . municipal corporation . . . except as otherwise provided in the Constitution, including meetings with or attended by any person elected to such board or commission, but who has not yet taken office, **at which official acts are to be taken are declared to be public meetings open to the public at all times**, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting. The board or commission must provide reasonable notice of all such meetings.

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FLORIDA'S SUNSHINE LAW

JUDICIAL INTERPRETATIONS

The obvious intent was to cover **any gathering of the members where the members deal with some matter on which foreseeable action will be taken** by the board

Board of Public Instruction of Broward County v. Doran, 224 So.2d 693

One purpose of the government in the sunshine law was to prevent at nonpublic meetings the crystallization of secret decisions to a point just short of ceremonial acceptance. Rarely could there be any purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. **The statute should be construed so as to frustrate all evasive devices**.

Town of Palm Beach v. Gradison, 296 So.2d 473, 477 (Fla. 1974)

We note that the Sunshine Law was enacted in the public interest to protect the public from "closed door" politics and, as such, **the law must be broadly construed to effect its remedial and protective purpose**.

Wood v. Marston, 442 So.2d 934, 938 (Fla. 1983)

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What is a Public Meeting

Generally

Technology is Not A Way Out & Other Pitfalls

If an official act is taken, or public business is being transacted or discussed

- Exchanging E-mails and Memoranda Counts
- All social media platforms and messenger applications count
  e.g. Facebook, Instagram, Reddit, WhatsApp, NextDoor, Snapchat, etc.
- Beware social media comment threads
- First bite at the apple (no response)

What is a Public Meeting

Generally

Under Florida law, **any interaction between two or more members of a board or council**, if that interaction **includes matters** that could reasonably be expected **to come before that body** at some point, **is considered a meeting** and must be held in compliance with Florida public meetings law.

You ***cannot*** do indirectly, or through technology, that which you could not do directly

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Public Meeting & Public Comment

Generally

Members of the public shall be given a ***reasonable opportunity to be heard*** on a proposition before a board or commission. The opportunity to be heard need not occur at the same meeting at which the board or commission takes official action on the proposition if the opportunity occurs at a meeting that is ***during the decisionmaking process*** and is ***within reasonable proximity in time before the meeting at which the board or commission takes the official action***.

This section ***does not prohibit a board or commission from maintaining orderly conduct or proper decorum*** in a public meeting. The opportunity to be heard is subject to rules or policies adopted by the board or commission. . . .

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Public Meeting & Public Comment

Consequences of Violating Sunshine Law

- **An action taken in violation of the Sunshine Law is void *ab initio***
- **Any public officer who violates the Sunshine Law is guilty of a noncriminal infraction, punishable by a fine not exceeding $500**
- **Knowingly attending a meeting in violation of the statute is a misdemeanor of the second degree**
- **A court may assess an attorney's fee against you for enforcement of this statute**

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QUESTIONS ? ? ?

PUBLIC MEETINGS

VOTING REQUIREMENT

A member of a . . . municipal governmental board . . . who is present at a meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted ***may not abstain from voting in regard to any such decision, ruling, or act***; 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 under [relevant provisions of Florida's ethics code].

If there is, or appears to be, a possible conflict [as a matter of stature]. . . . 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***.

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PUBLIC MEETINGS

VOTING CONFLICTS

Fla. Stat. § 112.3143 (3) (a) – Voting Conflicts

No county, municipal, or other local public officer shall vote in an official capacity upon any measure which ***would inure to his or her special private gain or loss***; which he or she ***knows would inure to the special private gain or loss of any principal by whom he or she is retained*** or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she ***knows would inure to the special private gain or loss of a relative or business associate of the public officer***. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

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PUBLIC MEETINGS

VOTING REQUIREMENT

Ft. Pierce BOA Rules of Procedure (Rule 6.E. (1) - (3))

Procedures involving a voting conflict for a member of the Board shall be governed by applicable Florida law, including §112.3143, Florida Statutes

Pursuant to §286.012, Florida Statutes, no member of the Board who is present at a meeting may abstain from voting on any matter to be taken or adopted by the Board except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of §112.3143, Florida Statutes.

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PUBLIC MEETINGS

VOTING CONFLICTS

VOTING CONFLICTS TESTS

- Special private gain or loss
- Size of the class test (1% test)
- Remote and Speculative test

HOW TO HANDLE VOTING CONFLICTS

(1) Read the Agenda
(2) Consult with City Attorney
(3) Announce
(4) Abstain
(5) Disclose / File form with State

Advice: Get off dais and leave room, if possible

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QUESTIONS ? ? ?

PARLIAMENTARY PROCEDURE

WHY: GOALS & IMPORTANCE OF PROCEDURE

GOAL:

Shared expectations and open communication

> ***"The application of parliamentary law is the best method yet devised to enable assemblies of any size, with due regard for every member's opinion, to arrive at the general will on the maximum number of questions of varying complexity in a minimum amount of time and under all kinds of internal climate ranging from total harmony to hardened or impassioned division of opinion." – Robert's Rules of Order***

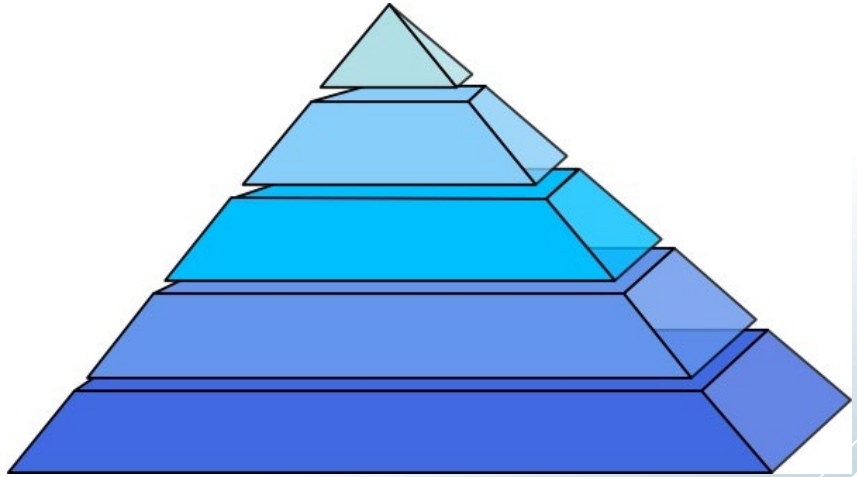
Each member has the right to make the maximum effort to have his or her position declared the will of the body, to the extent that can be tolerated in the interests of the entire body.

Parliamentary Procedure

What: Sources of Parliamentary Guidelines

Precedence

- **U.S. Constitution (e.g. Free speech & Due Process)**
- **State Constitution**
- **State Statutes (e.g. Sunshine law)**
- **Community Charter**
- **Community Ordinance**
- **Governing Resolutions and Rules**
- **Standardized/Sample Procedural Guidelines**



PARLIAMENTARY PROCEDURE

WHAT: SOURCES OF PARLIAMENTARY GUIDELINES

CFP § 2-49 (b)

Robert's Rules. In all matters coming before the commission, the parliamentary conduct thereof shall be governed by Robert's Rules of Order, Newly Revised, 11th edition, except as otherwise provided by state law, the charter or ordinances of the city.

CFP BOA Rule 8.A.

Procedural Rules. Generally accepted parliamentary procedures shall prevail at meetings of the Board except as may otherwise be provided for in these roles.

CFP HBP Rule 1

Robert's Rules of Order are hereby adopted for the government of the Board in all cases not otherwise provided for in these rules

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PARLIAMENTARY PROCEDURE

WHO: THE PRESIDING OFFICER ("PO") AS PARLIAMENTARIAN

- The PO of the meeting usually the designated parliamentarian tasked with preserving order and decorum
- Occasionally assisted by legal guidance of identified legal counsel
- Does not preside over all municipal affairs (see CFP Charter § 31)

Parliamentary Procedure

Who: The Presiding Officer ("PO") as Parliamentarian

- Parliamentarian first relies on the legislative body's policies and rules of procedure for guidance; if the council's policies do not address the issue, parliamentarian consults a secondary source for guidance, such as Robert's Rules of Order.

- May call to attention errors in the proceedings which affect the substantive rights of any member or otherwise do harm, but will not interrupt the proceedings unless substantive rights are at issue.

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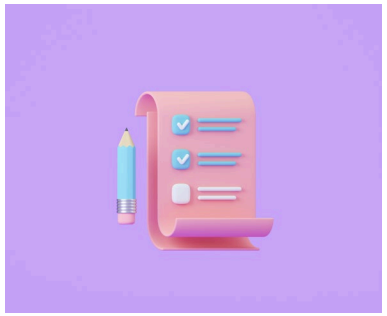
Parliamentary Procedure

Where/ When /How: The Agenda



At a public and noticed meeting, where minutes are taken and a quorum exists

Establishes shared expectations for flow of a meeting

Not a statutory requirement, usually provided for in local rules

PARLIAMENTARY PROCEDURE

RULES OF SPEAKING & DEBATE GENERALLY

- A member must be recognized before they can speak.
- As much as possible, the use of names of members should be avoided in debate.
- Remarks must be relevant. When remarks are not germane, try this useful sentence: "Members will kindly keep their comments strictly to the topic under discussion."
- No attacks on personalities. No name calling.
- The measure, ***not*** the member or their motive, is the subject of debate.

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QUESTIONS ? ? ?

Types of Hearings

Legislative vs. Quasi-Judicial

Generally speaking, legislative action results in the formulation of a general rule of policy, whereas judicial action results in the application of a general rule of policy.

Quasi-Judicial Decisions

- The term "quasi-judicial" refers to the performance of a "judicial" function by someone who isn't technically a judge.
- Applying established law/criteria to facts and evidence in record
- Great deference is paid to a legislative finding of public purpose

Types of Hearings

Legislative vs. Quasi-Judicial

QJ hearings typically defined by objective criteria

(e.g. variances, historic designations, conditional uses, rezoning for planned development zone)

CFP § 125-100 – Criteria for Variances

A variance may be granted only in the event that all of the following criteria are satisfied:

(1) Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same zoning district;
(2) The special conditions and circumstances do not result from the actions of the applicant;
(3) The literal interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of the ordinance and would result in unnecessary and undue hardship on the applicant;
(4) The variance granted is the minimum variance that will make possible the reasonable use of the land, building or structure; and
(5) The granting of the variance will be in harmony with the general intent and purpose of the ordinance codified in this section and such variance will not be injurious to the area involved or otherwise detrimental to the public welfare.

HBP § 111-123. - Criteria

HBP § 125-212 (b) – Planned Development Zone; General Standards for Approval

HBP § 125-243. – Innovative Residential Developments

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Types of Hearings

Quasi-Judicial: An Impartial Fact-Finder

The obligation of impartiality governs not just judges, but anyone acting in a "judicial or quasi-judicial capacity.

Fla. Stat. § 286.012 (Revisited)

If there is, or appears to be, a possible conflict [as a matter of stature]. . . . 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***.

Resolution No. 19-R35 (Quasi Judicial Hearing Procedures

In all quasi-judicial hearings, all rulings must be based only upon the evidence presented at the hearing. . .

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Types of Hearings

Quasi-Judicial: An Impartial Fact-Finder

CFP Resolution 19-R35 – Unauthorized Communications

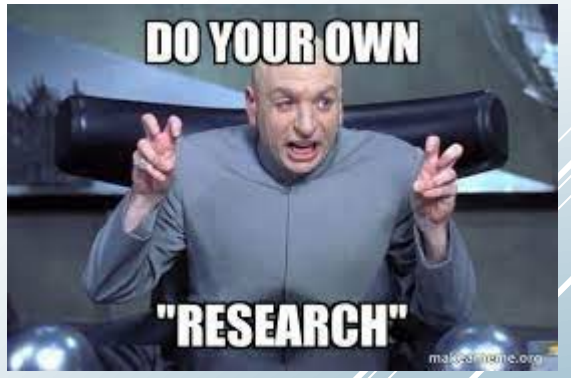
In all quasi-judicial hearings, all rulings must be based only upon the evidence presented at the hearing. Ex parte communications with City Commissioners in quasi-judicial matters are permissible and the adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with City Commissioners:

A. Disclose identity and made part of the record

B. Written communications are made a part of the record before final action

C. Disclose any investigation or site visits

D. Disclosure made before or during meeting where public meeting takes place



TYPES OF HEARINGS

QUASI-JUDICIAL: INTERVENORS

CFP Resolution 19-R35 – Party Intervenors

At City attorney's discretion, a person may intervene if:

(1) They have an interest in the application, ***different than the public at large***

(2) At least three (3) calendar days prior to the hearing, the ***person shall submit a written request to intervene including***: a detailed outline of his or her interest in the application and argument in favor or against it, copies of all exhibits which will be presented at the hearing and the names and addresses of all witnesses who will be called to testify on their behalf (including resumes for any witness the person intends to qualify as an expert).

TYPES OF HEARINGS

QUASI-JUDICIAL: ROLE OF FACT-FINDER

The body must make its findings of fact and conclusion of law based on the record before it

Commissioners and the City Attorney may ask questions of City staff, the Applicant (or his/her representative or counsel) or Any Party Intervenor (or his/her representative or counsel) who presents testimony or evidence at any time during the proceedings until commencement of deliberation.

After each witness testifies, the City staff representative, the Applicant's representative and/or the Party Intervenor's representative shall be permitted to question the witness, but such cross-examination shall be limited to matters about which the witness testified and shall be limited to five (5) minutes per side. Members of the public will not be permitted to cross-examine witnesses. Crossexamination shall be permitted only as would be permitted in a Florida court of law

Types of Hearings

Quasi-Judicial: Standard of Proof
Competent Substantial Evidence

CFP Resolution 19-R35 – Standard of Proof

The decision of the City Commission to approve, deny or modify an agenda item ***shall be based on competent substantial evidence***.

Competent substantial evidence is evidence which will establish a substantial basis from which the fact at issue can reasonably be inferred.

It includes fact or opinion evidence offered by an expert on a matter that requires specialized knowledge and that is relevant to the issues to be decided.

It is evidence a reasonable mind could accept as having probative weight and adequate to support a legal conclusion.

Hypothetical, speculative, fear or emotion based generalized statements that do not address the relevant issues and that cannot be reasonably said to support the action advocated, are not competent substantial evidence.

Types of Hearings

Quasi-Judicial: An Impartial Fact-Finder

- Look for and adhere to criteria in evaluating decision making
- Articulate the basis for your decision
- The process and decisions cannot be based on prejudice, but instead the competent substantial evidence
- Council/Commission is bound by the record, not the City's recommendation or Applicant's argument
- Avoid site visits and *ex parte* communications to preserve impartiality and avoid entering evidence into the record as the judge

QUESTIONS ? ? ?

Types of Hearings

Quasi-Judicial: Appellate Review

Either party has the ability to appeal a quasi-judicial decision but appellate review is limited to the record below

Three Core Considerations

1. That the parties were afforded ***procedural due process***

2. That the ***essential requirements of law*** were observed

3. That the administrative findings and judgment are supported by ***competent substantial evidence***

Types of Hearings

Quasi-Judicial: Appellate Review – Due Process

- Requires adequate notice, which may vary based on the circumstances
- Requires reasonable opportunity to be heard
- A preconceived bias that impairs the impartiality of the decision maker can impede procedural due process

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Types of Hearings

Quasi-Judicial: Appellate Review – Essential Requirements of Law

- Did the quasi-judicial body apply the correct legal standard
- The existence of a controlling statute is clearly established law
- Same principles extend to applicable ordinances

Types of Hearings

Quasi-Judicial: Appellate Review
Competent Substantial Evidence

Defined as evidence which is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached

Examples of CSE

- Recommendations by professional staff
- Testimony
- Photographs
- Traffic study
- Appraisals by a qualified professional

What is Not CSE

- Things derivative of a subjective point of view
  - Feelings
  - Instincts
  - "A sense"
  - "Everybody knows . . . ."
- The number of people supporting or against relief requested
- The will of the voters

Types of Hearings

Quasi-Judicial: Appellate Review
Competent Substantial Evidence

CFP Resolution 19-R35 – IX. Rules of Evidence

A. All evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, ***whether or not such evidence would be admissible in a court of law in Florida***. Irrelevant, immaterial, harassing, defamatory or unduly repetitive evidence shall be excluded

B. Hearsay evidence may be used for the purposes of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a civil action.

C. Documentary evidence may be presented in the form of a copy or the original. Upon request, parties shall be given an opportunity to compare the copy with the original.

TYPES OF HEARINGS

QUASI-JUDICIAL: A CASE STUDY

Trulieve, Inc v. City of Oakland Park, FLWSUPP 3012 TRUL (17th Jud. Cir. Jan. 11, 2023)

Posture

- Conditional use approval for a medical marijuana dispensary. City's DRC recommended approval. City staff report recommended approval, finding the application consistent with Comp Plan and City zoning regulations.

- Planning and Zoning Board denied. Appealed to City Commission, which also denied.

- Appealed to Court.

Holding

- City Commission decision overturned

Rationale

- The record confirmed application was compliant with all conditions and the reasons for the denial was premised on personal preference

- Applicant denied due process when Mayor's interest conflicted with ability to impartially review application

- Commission failed to articulate their rationale on supporting law, but founded decisions on personal reasons and excessive restrictions

Types of Hearings

Quasi-Judicial: A Case Study

Smith v. City of West Palm Beach, 750 So.2d 166 (2000 Fla. 2d DCA)

Holding

- Upholding decision of appellate court below, affirming Zoning Board of Appeals Decision

Rationale

- If there are conflicts in the evidence presented to the board, the reviewing court will uphold its judgment if it is a fairly debatable decision. A fairly debatable decision is one where the Board's action is reasonably based, and, as a result, prevents the court from substituting the Board's judgment with that of its own.

- By whatever name it is called, the task of the court reviewing a zoning variance decision is to insure that the authority's decision is based on evidence a reasonable mind would accept to support a conclusion.

QUESTIONS ? ? ?