

# QUASI-JUDICIAL RULES AND PROCEDURES

of the

## ST. JOHNS COUNTY PLANNING AND ZONING AGENCY



Suggestions should be sent in writing to the County Administrator for consideration.

**ADOPTED October 20, 2016**

Planning and Zoning Agency Resolution 2016-07

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## OPTIONAL RULES AND PROCEDURES FOR QUASI-JUDICIAL HEARINGS

### A. DEFINITIONS:

1. **Applicant.** Applicant shall mean the person or corporation making an application before the Planning and Zoning Agency. For purposes of the application of these procedures, Applicant also includes representatives of the Applicant, including counsel, as well as the owner or contract purchaser of property who has authorized the applicant to make application. Applicant may also include expert witnesses and technical or expert support brought on behalf of the applicant. If the application is an appeal before the Planning and Zoning Agency, the Applicant shall be the Appellant. An applicant shall be considered a Party to the proceeding.
2. **Designated Representative:** Members of the public, an association, corporation, legal entity, or group who wish to communicate the same message or provide the same competent substantial evidence (e.g., support, opposition, or neutrality) to the Agency may choose a designated representative to speak on the members' behalf, rather than individual members of the group speaking. Designated representatives shall submit a written list of the members they represent and shall verify that the representative speaks on behalf of the members. Such verification may be by testimony under oath or by notarization. Members of the public on the written list shall cede their time for public comment to the Designated Representative. Designated Representatives may include, but is not limited to, officers or representatives of homeowner's associations, property owners associations, community groups, and attorneys. In the event of a corporation or legal entity, officers and members of that legal entity shall cede time to the Designated Representative. Designated Representatives shall be considered participants and not a Party or Party Intervenor.
3. **Members of the Public:** All other persons who appear before the PZA who are not an Applicant, Designated Representative, Party Intervenor, or Staff and may provide testimony during the Public Comment period. Members of the Public are participants and are not considered as Parties to the proceeding before the PZA.
4. **Party Intervenor:** The Chair of the Planning and Zoning Agency, with advice from the County Attorney, may allow a person to intervene as a Party Intervenor if they meet the following requirements:
  - a. The person must have an interest in the application, which is different than the public at large.
  - b. At least eight days prior the hearing, the person shall submit a written request to intervene including: a detailed outline of their 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 witness who will be called to testify on their behalf (including resumes for any witness the person intends to qualify as an expert).

Notwithstanding the above, an association representative under the Neighborhood Bill of Rights, Ordinance 2007-01, shall be deemed a Party Intervenor.

If the application is an appeal of an order or determination before the Planning and Zoning Agency, the person granted the order subject to appeal shall be deemed a Party Intervenor.

5. **Staff:** St. Johns County Personnel under the County Administrator, including Growth Management Personnel or Personnel in other Departments under the County Administrator. Staff also includes representatives such as a designated Staff attorney or other persons providing testimony on behalf of Staff. Staff is considered a party before the proceeding before the PZA.

## **B. CONDUCT OF HEARING:**

**1. Scope.** The Agency expressly recognizes that promoting and preserving decorum and civility best enables the Agency to fairly and expeditiously conduct the business of the County. These procedures may apply to all quasi-judicial hearings held by the Planning and Zoning Agency, at the option of the Chair or majority of the Agency. The Planning and Zoning Agency, with advice from the County Attorney, shall determine which matters are quasi-judicial in nature. The Planning and Zoning Agency may apply these procedures to legislative hearings or to other public hearings. These rules are optional and any errors, omissions, waivers, variances, or departures from the rules shall not, in and of themselves, be considered a jurisdictional or procedural error subject to appeal or reversal. Such procedures may be waived, varied, or alternate arrangements made so long as basic procedural due process is ensured.

**2. Proceedings.** The Chair, Vice-Chair or other presiding officer shall conduct the proceedings and maintain order. The County Attorney or legal advisor shall represent the Agency, rule on all evidentiary and procedural issues and objections, and advise the Agency as to the applicable law and necessary factual findings. Hearings shall be conducted informally, but with decorum. Formal rules of procedure shall not apply except as set forth herein; however, fundamental due process shall be accorded. The Chair may decline to recognize any person who presents irrelevant, repetitious, personal, impertinent, or slanderous comments not related to the proceedings before the Agency.

## **C. ORDER OF PROCEEDINGS:**

**1. Ex Parte communications and Unauthorized Communications.** In all quasi-judicial hearings, all rulings must be based only upon the competent substantial evidence presented at the hearing. In accordance with Section 286.0115(1), Florida Statutes, ex parte communications with a member of the Planning and Zoning Agency is permissible if the

communications are disclosed consistent with the requirements of St. Johns County Resolution 95-126. Ex Parte communications and disclosures must be made before or during a public meeting prior to a vote 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. Such disclosures should state the substance of the communication and entity with whom the communication took place.

2. **Staff Presentation.** County Administration Staff, or when required, a member of the County Attorney's Office representing County Staff, shall describe the item to be considered and make a presentation pertaining to the item. The Chair shall then inquire as to whether any Commissioner has questions for Staff members on the presentation, or may hold questions by the Agency until all initial presentations or public comments have been made. At the option of the Chair, Staff Presentation may be limited to a set time.
3. **Applicant Presentation.** The applicant or representative may make a presentation pertaining to the application. The Chair will inquire as to whether Agency Members have questions of the applicant or representatives or may hold questions by the Agency until all initial presentations or public comments have been made. At the option of the Chair, Applicant Presentation may be limited to a set time.
4. **Party Intervenor Presentation.** A Party Intervenor will make a presentation pertaining to the application. The Chair will inquire as to whether Agency Members have questions of the Party Intervenor or may hold questions by the Agency until all initial presentations or public comments have been made. At the option of the Chair, Party Intervenor Presentation may be limited to a set time.
5. **Public Comment.** The Vice Chair will declare Public Comment to be open and will ask if any members in the audience wish to make a presentation or present testimony. At the conclusion of testimony, the Agency Members or any of the parties to the proceeding may have questions of the testimony presented or may hold questions until later. The Vice Chair will then close public comment and no further public comment shall be taken unless with the express approval of the Chair. Designated Representatives not determined to be Party Intervenors shall provide comment or presentation during this period. There shall be no sharing or contribution of time to other members of the public unless to a Designated Representative. After all members of the general public who have been scheduled to speak have done so and the Agency has finished their questions of the speakers, the Chair shall declare the public hearing to be closed. No further remarks shall be heard from the general public.

6. **Staff Rebuttal.** Staff will have the opportunity to rebut testimony presented during the public hearing. Rebuttal presentation shall be limited to discussion or testimony presented. No new evidence shall be presented during the rebuttal presentation.
7. **Party Intervenor Rebuttal.** Party Intervenor will have an opportunity to rebut testimony presented during the public hearing. Rebuttal presentation shall be limited to discussion or testimony presented. No new evidence shall be presented during the Rebuttal presentation.
8. **Applicant Rebuttal.** Applicant will have the opportunity to rebut testimony presented during the public hearing. This includes responses or questions to the Agency as to any declared or disclosed ex-parte communications. Rebuttal presentation shall be limited to discussion or testimony presented. No new evidence shall be presented during the Rebuttal presentation
9. **Discussion by Agency.** Once presentations, public comment, and rebuttal presentations are completed, the Chair shall bring the matter for discussion before the Agency. The Agency shall deliberate, and members of the Agency, through the Chair, may recall any speaker to answer questions of the Agency.
10. **Voting.** Upon conclusion of discussion, the Agency may vote on the matter. Unless otherwise required by State statute, ordinance, or indicated by these Rules, all action by the Agency shall be by majority vote of those Agency Members present. A failure to receive a majority vote of the members present defeats the question before the Agency. If no further motion for approval or denial is made the application is deemed denied and the entire record, including application materials, testimony, documents, and evidence is made a part of the facts the Agency used to make its determination.

#### **D. CROSS-EXAMINATION OF WITNESSES.**

After each witness testifies, Staff, Applicant's representative, and Party Intervenor 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 no more than five minutes. Members of the public, and other non-party participants, will not be permitted to cross-examine witnesses.

#### **E. RECESS, CONTINUANCES, AND DEFFERALS.**

1. The Planning and Zoning Agency shall consider requests for continuances by County Staff, the Applicant, and the Party Intervenor and may grant continuances in its sole discretion. If, in the opinion of the Agency, any testimony, documentary evidence, or information presented at hearing justifies allowing additional research or review in order to properly determine the issue presented, then the Agency may continue the matter to a reasonable time certain to allow such research or review.

2. Public hearings may be recessed by order of the Chair or by a majority of the Agency Members present to a time certain on the same or another day.
3. At the close of the business day, or as close to 5:00 p.m. as practical, the Agency, upon the request of the Chair or Commissioner, with a vote of the majority, may defer or continue any or all of the remaining agenda items or public hearings to a date and time certain, either at a regular, workshop, or special meeting, which shall be properly noticed.
4. In the event a quorum is not present, a lesser number of the Agency may adjourn from time to time until a quorum is present, take any action to obtain a quorum, or the meeting of the Agency shall be suspended or adjourned, if a quorum is lacking.
5. In the event of an emergency, inclement weather, or in the event a quorum is unable to be obtained, all items shall automatically be continued to the next scheduled available hearing of the Planning and Zoning Agency.

#### **F. STATEMENTS OF COUNSEL.**

Statements of Counsel representing a group or Party Intervenor shall only be considered as argument and not testimony unless counsel is sworn in and the testimony is based on actual personal knowledge of the matters which are the subject of the statements.

#### **G. FAILURE OF APPLICANT TO APPEAR.**

If the Applicant or Party Intervenor or their representative fails to appear at the time fixed for the hearing, and such absence is not excused by the Agency, the unless otherwise prohibited by any other rule or regulation Agency may proceed to hear the evidence and render a decision thereon in absentia.

#### **H. RULES OF EVIDENCE.**

- a. The County Attorney's Office shall rule on all evidentiary issues.
- b. 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.
- c. Hearsay evidence may be used for the purposes of supplementing or explaining other evidence, but shall be given appropriate weight and credibility.
- d. 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.
- e. For Quasi-Judicial proceedings evidence and testimony presented upon which a determination will be based shall consist of Competent Substantial Evidence.

- f. The Agency shall assign weight and credibility to such above testimony as it deems appropriate.
- g. A Party or Party Intervenor in a quasi-judicial proceeding, upon request by another Party or Party Intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party intervenors, and shall be required to be qualified as an expert witness, as appropriate.
- h. Documentary evidence presented shall retained by the Clerk and made a part of the public record.

#### **I. REMAND**

If there is a material change in the application materials, as determined by the Board of County Commissioners, between the application heard before the Planning and Zoning Agency and the application presented before the Board of County Commissioners, the Board of County Commissioners may: a) remand the application to the PZA for the PZA's recommendation on the materially altered application; b) continue or delay the item to a later date to provide Staff an adequate and reasonable time to analyze the material change; or c) hear the item and make a final determination. In the event of a Remand, the Planning and Zoning Agency shall hear the application and take into consideration the material change causing the remand, the effect on the entire application, as well as any direction given by the Board of County Commissioners. The Planning and Zoning Agency may provide recommendation on material changes that would require remand to the Agency.

#### **J. LIMITATIONS ON COMMENT**

The limitations provided may be altered by the Chair to ensure the orderly conduct of the hearing.

- 1. The Chair may grant additional time to any speaker for good cause.
- 2. The Chair may decline to recognize any person who presents irrelevant, repetitious, personal, impertinent, or slanderous comments not related to the proceedings before the Agency. Persons disrupting the hearing may be removed in order to preserve procedural due process and decorum.
- 3. Unless otherwise determined by the Chair to hold all questions, at any time during the hearing, the Agency Members, through the Chair, may question any speaker concerning any speaker's remarks, or they may recall any speaker for clarification of his or her previous remarks or for additional remarks.
- 4. Members of the public shall be given a reasonable opportunity to be heard. The opportunity to be heard need not occur at the same meeting at which the Agency takes official action if the opportunity occurs at a meeting that is during the decision making

process and is within reasonable proximity in time before the hearing at which the Agency takes official action.

5. Each member of the public shall limit comments during the public comment period to three (3) minutes. There shall be no sharing or assigning of time to other members of the public not meeting the requirements of a Designated Representative. Such time may be extended by the Chair for good cause. No member of the public shall be heard more than once, unless granted permission by the Chair for good cause.
6. Designated Representatives shall limit comments and presentations to ten (10) minutes if representing members of five (5) to nineteen (19) people. Designated representatives for groups of twenty (20) or more persons shall limit comments and presentation to fifteen (15) minutes. Such time may be extended or limited by the Chair for good cause. Designated representatives of four (4) people or less shall limit comments and presentation to five (5) minutes. Designated Representatives for corporations or legal entities shall limit comments and presentations to ten (10) minutes.
7. (Optional) Multiple Concurrent Applications and Hearings. Multiple applications and hearings related to the same project may be combined for presentation purposes and presented concurrently by Staff and the Applicant. Party Intervenors, designated representatives, and members of the public shall comment on the combined presentation or aspects of the combined presentation. The time allotted may be increased by the Chair if the presentation and circumstances warrant an increase, otherwise the time limitations above shall apply to the combined presentation of concurrent items. Time may be increased for an additional minute for every additional concurrent application presented in combination. (Example: three concurrent applications related to the same project may grant 5 minutes (3 +1 +1)). The Agency shall rule and make motions on each item individually, but may hear all items simultaneously.

#### **K. RULES OF DECORUM**

1. When the Agency is in session, the Chair shall preserve order and decorum.
2. No Agency Member shall speak on any question or discuss any matter, nor interrupt another, nor make a motion without first being recognized by the Chair. When two or more members seek recognition by the Chair, the Chair shall name the member who is to speak first. No Agency Member shall be interrupted by another without the consent of the member who has the floor, except by rising to a question of order. A member, in speaking on any matter, shall confine him/herself to the question or matter before the Agency, shall not use unbecoming, abusive, or unparliamentary language, and shall avoid commenting on personalities or character of other Agency Members, former Agency Members, other officials, Staff, or the public.

3. **Disruption of Meeting:** Any person disrupting an Agency meeting by making personal, impertinent or slanderous remarks or by boisterous behavior while the Agency is in session, may be removed from the meeting by the Sheriff's office. Such removal may be requested by the Chair in his/her discretion, or by consensus of the Board or by the Sheriff's office if there is perceived to be an immediate threat to any person. No demonstrations of approval or disapproval from the audience shall be permitted; and if, after warning by the Chair, such demonstrations are made and result in a disruption of the meeting, the person(s) creating such disruption may be removed from the meeting; or the chair may recess the meeting until order is restored. The chair shall call upon the Sheriff's officers or other security officer who may be present during the meeting to enforce directions given by the Chair for any violation of this Rule.
4. **Members of the Public and Designated Representatives** shall address their comments to the Agency as a whole and not to any Agency Member individually or any group of Agency Members. Imposing a demand for an immediate response from the Agency or any Member thereof during public comment shall be considered out of order. An Agency Member shall not engage in dialogue with persons making public comment unless the question or comment is directed through the Chair or made with the permission of the Chair.

#### **L. VOTING.**

1. **Majority Action:** Unless otherwise required, all actions by the Agency shall be by majority vote of the Agency Members present. Ministerial matters may be approved by consensus of the Agency Members present.
2. **Failure to receive Majority action:** A failure to receive a majority vote of the members present defeats the question before the Agency. The Chair shall call for any further motions within a specified period of time. If no further motion for approval or denial, or any other motion, is made the application is deemed denied and the entire record, including application materials, testimony, documents, and evidence is made a part of the facts the Agency used to make its determination.
3. **Manner of Voting:** Votes shall normally be conducted electronically for applications if the electronic voting system is available; otherwise, voice votes shall be used. In the case of any vote, if the Chair is in doubt as to the outcome, or upon request of an Agency Member for any reason, the Chair shall call for a roll-call vote. The roll-call vote shall be called by the Clerk in a rotating sequence.

4. Proxy voting prohibited: An Agency Member shall not vote for another Agency Member, nor shall any person not an Agency Member cast a vote for an Agency Member. Agency Members must be present and cast their own vote.
5. Change in vote: After announcement of the results of a vote, no vote may be changed or taken on the question unless a motion for reconsideration is approved.
6. Reconsideration: after the decision of any question, it shall be in order only for an Agency Member voting on the prevailing side to move a reconsideration, but such motion may be seconded by any Agency Member.