

TOWN OF MALABAR

BOARD OF ADJUSTMENT PUBLIC HEARING

TUESDAY, JUNE 16, 2008

7:00 P.M.

MALABAR COUNCIL CHAMBER

2725 MALABAR ROAD

MALABAR, FLORIDA

AGENDA

A. CALL TO ORDER

B. ROLL CALL

C. CONSENT AGENDA

1. Approval of Minutes

Board of Adjustment Meeting – 4/22/07

Exhibit: Agenda Report No 1

Recommendation: Motion to Approve

D. VARIANCE – RE-HEARING

2. Request from James Taranto For a Re-Hearing

Applicant requests Re-Hearing on Variance request to Malabar Code of Ordinance Chapter 13, Section 13-38.C regarding road right-of-way improvement on Rebel Lane, north of Reese Road, west of Weber Road, adjacent to Parcel 783, located in Section 10, Township 29, Range 37, Malabar, Florida

Exhibit: Agenda Report No 2

Recommendation: Action

E. NEW BUSINESS

3. Consider Procedures for Hearings

Exhibit: Agenda Report No 3

Recommendation: Action

F. ADJOURNMENT

NOTICE OF RIGHT OF APPEAL OF BOARD OF ADJUSTMENT DECISIONS

In accordance with the Town of Malabar Land Development Code Article XII, any person aggrieved may appeal a decision of the Board of Adjustment in Circuit Court of Brevard County. An appeal must be filed within 30 days after the filing of such decision with the Town Clerk, but not thereafter. Provisions for review of Board of Adjustment decisions must be in a manner provided by the laws of the State of Florida.

"Person aggrieved" shall be in accordance with the Town of Malabar Land Development Code.

Any person desiring to appeal any decision made by the Board of Adjustment with respect to any matter considered at such meeting or hearing, will need a record of the proceedings, and for such purposes, must insure that a verbatim record and transcript of the proceeding is made in a form acceptable for official court proceedings, which record includes the testimony and evidence upon which the appeal is to be based. It shall be the responsibility of the person desiring to appeal any decision to prepare a verbatim record and transcript at his/her own expense, as the Town does not provide one.

ATTN: PERSONS WITH DISABILITIES. In accordance with the Americans with Disabilities Act and Section 286.26, Florida Statutes, persons needing special accommodations to participate in this proceeding shall, at least forty-eight (48) hours prior to the meeting, contact the Office of the Town Clerk at (

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 1
Meeting Date: June 16, 2008

Prepared By: Debby K. Franklin, Town Clerk/Treasurer

SUBJECT: Approval of Minutes

BACKGROUND/HISTORY:

Attached are the summary minutes for the following meetings

- Board of Adjustment held on April 22, 2008

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Draft Minutes of Board of Adjustment Meeting – dated 04/22/08

ACTION OPTIONS:

Town Clerk requests approval of the minutes.

TOWN OF MALABAR
BOARD OF ADJUSTMENT
PUBLIC HEARING
APRIL 22, 2008 MEETING MINUTES

This meeting of the Malabar Board of Adjustment was held at Town Hall at 2725 Malabar Road.

A. CALL TO ORDER AND ROLL CALL

The meeting was called to order at by the Chair, Paul Marpil, at 7:30PM.

Roll Call:

Paul Marpil, Chair

Debby Franklin, Secretary

Pat Benington

Carl Conklin

Barry Alexander

Donna Hanna, Alt

Jonathon Bull, Alt, # 2

Secretary introduced Jon Bull, Flashy Lane, appointed in December 2007 and sworn in. Board Member Cathy Harwood decided she could not commit to the meetings and resigned before being sworn in. Board Member Anne Varco still maintains a house here and has her business here but has bought a condo on beach and lives there. Code says you must be a resident within the corporate limits of the Town. Secretary has asked for a legal opinion.

This item was advertised two times in the Florida Today as a Public Hearing, on April 3 and April 10. The first ad must be at least 15 days before the Hearing. The property was also posted and the property owners within 500' were sent notices of the meeting and invited to submit comments or appear and be heard.

B. NOMINATION FOR CHAIR AND VICE-CHAIR FOR 2008

Nomination opened for Chair for the next year:

Benington/Conklin nominated Paul Marpil for Chair for 2008. No other nominations. Vote: All Aye.

Nomination opened for Vice-Chair for next year:

Alexander/Bull nominated Donna Hanna for Vice-Chair for 2008. No other nominations. Vote : All Aye.

C. OLD BUSINESS – none

1. Approval of Minutes – August 14, 2007

MOTION: Hanna / Alexander to approve minutes of August 14, 2007. Vote: All Aye

D. NEW BUSINESS – Chairman asked if applicant was present.

2. Variance: Variance request to Malabar Code of Ordinance Chapter 13, Section 13-38.C regarding road right-of-way improvement on Rebel Lane, north of Reese Road, west of Weber Road, adjacent to Parcel 783, located in Section 10, Township 29, Range 37, Malabar, Florida.

Chair called applicant to podium. Chair swore in applicant James Taranto. He presented his application. Stated the Code requires the road to go to the far end of the property. No further properties would benefit from this requirement to improve the road. The property to the north of this lot has access from Weber and it, and this lot as well as the lot north of 3150 across the street – are covered with wetlands. Taranto would like to improve only far enough to do a driveway. The uplands area would be where the home site would be. Per their report they would need a ¼ acre to build and not impact the wetlands. Reason for request is he doesn't want to cut down 10,000 sf of forest for no reason.

Benington stated the lot above is wet but it could be developed. Marpil had concern with amount of wetlands on the lot. He would probably have to come back before this Board later in order to build and meet setbacks of 40 feet and 30 feet. Marpil asked applicant to state the hardship.

Taranto stated the intent of the road ordinance is to improve roads. But the point of the ordinance is to improve the roads. Grant-Valkaria only requires you to go into their driveway. It is an ecological nightmare to cut down 10,000 sf of forest. What was the point of coming up to the furthest point of the property if it won't connect?

Bull asked what the charge to his client to build the road to the end of the road. Estimated to be about 20K. How much for the house? No figure at this time.

Chair explained the intent of the road ordinance was to develop the road system within the Town of some substantial quality for the welfare and safety of the public. So future new developers would be required to meet this standard and others would have to share in the cost and extent the Town ordinances provide.

Taranto stated this is a connected and significant wetland and flows into a huge pool behind Weber Road. It is ecologically impossible. He stated that ¾ of the roadway across the property to the north is marsh. He further stated the Malabar point of view is keep it rural. Cutting down 10,000 sf of trees seems to be opposite of Malabar's philosophy.

Bull asked how far the road currently goes. It goes the to south of this property and curves in to the driveway at 3150 Rebel. Would applicant have permission to plow across the driveway. It would not encroach on their property – the improvement would be within the 50 foot right-of-way.

Chair asked if there were any other questions of the applicant from the Board.

Bull asked what other hardship does the client have. Taranto stated it is not the cost. There are no properties behind this that would benefit. Hardship is on the ecology.

Chair asked if there were any adjacent property owners within 200 feet (now 500 feet) that would like to speak.

Barb Rossi, hands out letter Jim Taranto sent to her. He explained the road ordinance in the letter and she agreed with it. It is not fair to be exempt. It is not right. He further stated there is no need to extend Rebel Lane. She disagreed and said she thinks they should have to improve the road. It is a path and is wooded. She is concerned about fires. She can't see any emergency vehicles getting out there.

If there isn't a road built and the new house is built, it would drain onto her property. Everyone has to take care of their own piece.

Brian Hawken, 3245 Rebel Lane, has lived there since 1982, knows the hardship council had coming up with the road ordinance. If we allow people to sidestep the ordinances then what about the people that put the road in? He works for Melbourne Fire Department. If he had to commit a 1 million dollar vehicle and manpower at the end of the road to fight a fire, he wouldn't do it. There is no wild forest or oak trees. There are not a lot of trees in the right-of-way – there is a lot of scrub and wild rose bushes. It is a narrow road with ditches. He wouldn't put his people back in there. They need a road down there and a cul-d-sac. He sees a real need.

Conklin asked how far he built the road. He put in 450' of road from Reese road to the center of his property. He did not go to the furthest point of his property. Bull asked when Rossi house went in. Who put in the next section? Mr. Burns built the next section of road and built the house at 3150 Rebel in 1986. Rossi bought it from Burns.

Benington asked Hawkins what he meant by not a lot of trees. Hawkins stated he had walked the property line at the right-of-way and there is not a forest – it is mostly scrub. Not pristine forest. Bull asked when first road ordinance was adopted. 1981 - 1986.

Chair called Board back to the point. Applicant is asking for a variance from this Board from the Ordinance that requires him to build to the furthest point of his property.

Any other speakers. None.

Closed to Public and back to Board for discussion.

Chair stated Board should base decision on this, what hardship has been presented to you so you could make an exception to the road improvement requirement. If there was a wetlands in the middle of the road right of way, or gopher turtles living in the right of way or even 16 Grand Oaks. It (the roadway) basically goes nowhere. In the future someone could come in with money and build it.

Chair reviewed Board Options:

Make him put in a minimum width roadway and turn around at the end for fire trucks etc. Or you could say he should build only to the driveway and sign paperwork that the road would have to be built to the furthest point of the property at some point in the future when the adjacent property is developed.

Chair asked for comments from Board. Conklin said after looking at this it is more a cost avoidance than a hardship case based on ecological. If someone purchases to lot to the north and wants to build, they would have to finish the road.

Chair said you could make it part of the variance approval to attach a requirement in the future if the road is to be built, they would have to share a fair and equal cost in building the road. The problem there is if it doesn't happen for 20 years it would be difficult to enforce. We cannot attach properties.

Alexander recommended having him go 3/4 of the way and provide a turn around. This is a typical request. Conklin supported making them put in a turn around at the end of the road. Board discussed the right of way that would be required to turn a fire truck around. Board cannot make applicant get right-of-way from property owner on other side of road.

Benington said there are not that many trees showing in the aerial. She said she would support having him put in the road to the far end. It is to everyone's benefit.

Alexander said the road ordinance was written to correct this problem.

MOTION:

Benington / Hanna to deny the request for a variance to the road requirement to build to the furthest point of the property.

Discussion. The road should go to the end of the property. Conklin said he liked the Chairs suggestion about requiring only a portion to be improved now – to a driveway - and later would be required to improve or pay for improvements if the property to the north sells and wants to develop. Chair explained we can't impose a requirement we can't enforce and we can't encumber the land. Conklin said if we can't do that then we need to require he build to the end of his property.

Vote: All Aye. Variance is denied.

D. STAFF REPORTS

Set next meeting date. May 27, 2008 for approve minutes and do housekeeping.

E. MEMBER REPORTS

F. ADJOURNMENT Motion: Conklin / Alexander to adjourn. Vote: All Aye. Meeting adjourned at 8:15 P.M.

Debby Franklin, Secretary

Paul Marpil, Chair

Date Approved:

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OF BOARD OF ADJUSTMENT DECISIONS**

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"Person aggrieved" shall be in accordance with the Town of Malabar Land Development Code.

TOWN OF MALABAR
BOARD OF ADJUSTMENT

Variance Application re: Chapter 13, Section 13-38(C))
Application of James Taranto)
Right-of-way along 29-37-10-00-00783.000 known as Rebel Lane)
Mailing address: 716 E. Palmetto Avenue)
Melbourne, FL 32901
Phone: 321-960-0729)

FINAL ORDER

UPON CONSIDERATION of the above styled proceeding to consider a variance, the Town's Board of Adjustment enters this final order:

On April 22, 2008, the Malabar Board of Adjustment, Malabar, Brevard County, Florida, conducted a public hearing to consider an application for a variance to the road improvement requirements in Chapter 13, Section 13-38, of the Code of Ordinances. Property is the right-of-way known as Rebel Lane near the north end from Reese Road adjacent to Parcel 00783.

Applicant states they have special circumstances per Section 13-39.C . and requests a variance to the street improvement requirement in Section 13-38. They wish to submit for permits for land clearing and a single family residence without having to improve the Rebel Lane right-of-way.

The variance request is: **DENIED** for failing to meet the criteria of Special Circumstances and Hardship due to wetlands and/or trees within the right-of-way.

SO ORDERED.

DATED this 23rd Day of April, 2008.


FILED

**TOWN OF MALABAR
BREVARD COUNTY, FLORIDA**

BOARD OF ADJUSTMENT

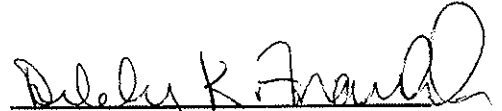
By: 
Paul Marpil, Chairman

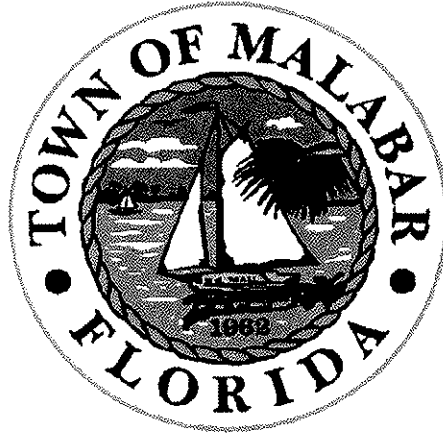
ATTEST:


Debby K. Franklin
Board Clerk

CERTIFICATE OF FILING AND DELIVERY

I, Debby K. Franklin, as Clerk of the Board of Adjustment of Malabar, Florida, hereby certify that this ORDER was rendered and filed in the property records in my office on the 25th Day of April, 2008, and that a copy hereof was hand delivered to the listed applicant on the 25th day of April, 2008.


Debby K. Franklin
Board Clerk



PUBLIC NOTICE

CASE NO. BOA-1-2008

The Re-Hearing Request will be considered at:
Town of Malabar Council Chambers
2725 Malabar Road

Board of Adjustment Meeting:
Tuesday, June 16, 2008 @ 7:00 pm

APPLICANT: James Taranto,

REQUEST: Re-Hear Request for Variance

FOR MORE INFORMATION
CONTACT THE CLERK'S OFFICE
AT (321) 727-7764 X 12

TORANTO500
Page 1

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321-960-0729

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ASHBURN, ROSEANN W
123 ELDRON BLVD NE
PALM BAY FL 32907

BLOCH, VERNON C
BLOCH, HELEN K H/W
3135 WEBER RD
MALABAR FL 32950

BREVARD COUNTY
700 PARK AVE S
TITUSVILLE FL 32780

BROWN, JOANNE M
3115 WEBER RD
MALABAR FL 32950

CHRISTENSEN, KEVIN KAJ
1280 ATZ RD
MALABAR FL 32950

CRIDDLE, JOHN D
CRIDDLE, PAMELA S TRUSTEES
3240 WEBER RD
MALABAR FL 32950

D'ALESSIO, PHILIP
D'ALESSIO, GLENDA H/W
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DAVIS, LELAND A
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MALABAR FL 32950

DENTON, FRANK
3185 WEBER RD
MALABAR FL 32950

FLAMM, THOMAS L
507 EDGEWOOD DR
MELBOURNE FL 32901

FLEURY, MARGARETE
KELLY, RAYMOND H/W
2734 MISTY OAKS CT
ROYAL PALM BEACH FL 33411

HAWKINS, BRIAN WAYNE
HAWKINS, TERESA A H/W
3245 REBEL LANE
MALABAR FL 32950

HOLLANDER, PATRICK R
HOLLANDER, ANDREA L TRUSTEES
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PORT ST LUCIE FL 34986

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3220 WEBER ROAD
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P O BOX 060053
PALM BAY FL 32906

MC GIRT, MARY
9995 BABCOCK STREET
FELLSMERE FL 32948

NICKELS, IRIS M
SCHELIN, JOHN PHILIP
9802 53RD AVENUE
COLLEGE PARK MD 20740

PETRUCCI, PETER
WALKOWSKI, MICHAEL W
398 CITY VIEW DR
FORT LAUDERDALE FL 33311

ROSS, BARBI
3150 REBEL LANE
MALABAR FL 32950

ROSS, BARBI TRUSTEE
3150 REBEL LANE
MALABAR FL 32950

SASTRAM, WILLIAM
SASTRAM, PHYLLIS H/W
3070 WEBER RD
MALABAR FL 32950

WEBER, KENNETH J
WEBER, FRANK P
P O BOX 500056
MALABAR FL 32950

WEGNER, ARLENE B
WEGNER, CLARENCE G
1000 FOG CT
LEXINGTON KY 40515

WHITWORTH, RICHARD T
WHITWORTH, VALARIE H/W
3055 WEBER RD
MALABAR FL 32950

24 MAY 2008

TOWN OF MALABAR
MALABAR COUNCIL CHAMBER
2725 MALABAR ROAD
MALABAR, FLORIDA 32950



RE: BOA-1-2008

DEAR BOARD OF ADJUSTMENT,

MY NAME IS MICHAEL WALKOWSKI, ALONG WITH MY PARTNER MR. PETER PETRUCCI, OWN THE PROPERTY IMMEDIATELY TO THE NORTH OF MR. TARANTO'S PROPERTY ON REBEL LANE. OUR PROPERTY SPANS FROM WEBER ROAD TO WHAT WOULD EVENTUALLY BE THE CULMINATION OF REBEL LANE.

WE RECEIVED THE RE-HEARING REQUEST PACKAGE VIA U.S. MAIL AND HAVE DECIDED TO WRITE TO OFFICIALLY SUPPORT THE BOARD. AFTER READING THROUGH THE FIRST HEARINGS MINUTES, THE APPEAL LETTER FROM MR. TARANTO AND THE TOWN CODE AND IN LIGHT OF THE RECENT FIRES WE CANNOT SEE WHERE THE BOARD SHOULD WAIVER ON THEIR FIRST DENIAL ON THE ROAD ISSUE AT ALL. THE CODE HAS BEEN WRITTEN WITH RESPECT FOR THE COMMUNITY AND INDIVIDUAL LIFE, HEALTH AND SAFETY.

WE WONDER WHAT WOULD HAPPEN IF...THE BOARD APPROVED THE REQUEST BY MR. TARANTO AND WE DECIDED TO EXTEND REBEL ROAD TO OUR PROPERTY. AS WE CAN TELL BY THE CODE, ONLY PROPERTY OWNERS APPLYING FOR A NEW BUILDING PERMIT AFTER COMPLETION OF CONSTRUCTION OF THE ROAD WOULD BE OBLIGATED TO PARTICIPATE. WE FEEL THIS IS A WAY OF SUBVERTING THE CODE OF THE TOWN WHICH PROTECTS ALL INHABITANTS.

ON OUR LAST VISIT TO OUR PROPERTY WE HAD A CHANCE TO MEET WITH MRS. ROSSI AND SPOKE ABOUT THE POSSIBILITY OF THE ROAD GOING THROUGH. WE WERE AMAZED AT THE AMOUNT OF DEBRIS IN WHAT IS THE RIGHT-OF-WAY. AS MR. TARANTO POINTED OUT THE CODE HADN'T BEEN WRITTEN SO STRICTLY BACK WHEN THOSE PROPERTIES WERE DEVELOPED BUT FEEL MORE MONITORING OF THE RIGHTS-OF-WAY MAY PREVENT SUCH CHAOS DURING A FIRE.

THANK YOU,

A handwritten signature in black ink, consisting of a stylized 'M' followed by a horizontal line and a period.

MICHAEL WALKOWSKI

MICHAEL WALKOWSKI, FORT LAUDERDALE, FLORIDA
OFFICE 954.522.5832 FAX 954.467.3204 CELL 954.444.9858

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 2
Meeting Date: May 20, 2008

Prepared By: Debby K. Franklin, Town Clerk/Treasurer

SUBJECT: Variance Request

BACKGROUND/HISTORY:

James Taranto, agent for the applicant is asking for a Re-hearing of the request.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Email requesting appeal.

ACTION OPTIONS:

Staff requests action.

Town Clerk / Treasurer

From: JIM TARANTO [jamestaranto@msn.com]
Sent: Wednesday, April 23, 2008 1:50 PM
To: Town Clerk / Treasurer
Subject: Appeal

April 23, 2008

RE: Board of Adjustment hearing 4/22/2008

To Town of Malabar Board of Adjustment:

I would like to **appeal the board's decision** not to allow a variance of the towns requirement to extend Rebel Lane.

My request for an appeal is based on the fact that **I was not allowed to respond** to the 2 property owners who live on Rebel Lane. After the board questioned me, they asked for public comment. After the two homeowners on Rebel made there comments, the chairman asked if anyone else had comments, then quickly closed the meeting to public comment.

I was under the impression he was asking if any other **nearby property owners** had comments, **after which I would be allowed to respond** to there comments. I tried raising my hand, but **was unallowed to comment** as the board began discussing it among themselves. We paid \$340 (\$300 + \$40 radius package) for this meeting and I believe we were entitled to respond.

I would like it to be noted that the chairman **Mr. Paul Marpil**, after all public comment had been heard said something along the line of, "**I hate to call it this, but what this is, in effect is a road to nowhere**".

I would also like it noted that the two residents of Rebel (neither of who ever extended Rebel to the far end of there property) made no case what so ever to enforce this ordinance except what boils down to the fact that **they don't want another neighbor**.

1-Ms Ross (3150 Rebel) in her letter to the Town of Malabar dated 2/29/08 stated clearly that **her chief concern was the protection of the wetlands and the wildlife**. She describes how her and her sons loved the natural setting and birds. She then summed up the letter stating that she would like the town to force the owners to build the road to the end if they want to

build. This is clearly a contradiction as forcing the road improvement will only cut out this wildlife unnecessarily.

2-Mr. Hawkins (3245 Rebel) After **insultingly** referring to me as an “outsider trying to skirt around Malabar’s ordinances”, and glorifying himself with his firefighting background, made his case that a one million dollar piece of fire equipment could never turn around on Rebel. **This entire argument has nothing to do with the discussion.** Huge pieces of fire equipment will never be able to easily turn around on Rebel, nor can they turn around on hardly any (if any) unpaved road in Malabar.

As a fireman who originally built Rebel **why did he not extend the road to the end of his property and put a huge cul-de-sac** in at that time if this is truly important to him?

What this clearly boils down to is a case where the 2 neighbors don’t want to disturb there quiet street. **It is obvious that improvement of the road makes building on this property cost prohibitive.** Both Rebel residents and the entire council realize this. Mr. Marpil’s question of, “What if a rich investor wanted to come in with bags of money and break though the north wetlands to develop northern properties” should not come into consideration with this small homesite and in my opinion should never have been mentioned. **Does Malabar really make decisions that hurt small property owners based on the fact that rich developers may want to fill in the wetlands at a later date?**

In summary, I would like to remind the board of what Mr. Marpil called this. “A Road to nowhere” No resident of Rebel has ever extended the road to the far end of there property and there are no real possible homesites to the north.

The only reason, not to allow this variance is to make building on this parcel cost rohibitive. That is not in line with why Malabar put the ordinance in place and is not constitutional.

Based on the fact that I was not allowed to respond to the public comment, I would like to appeal the boards decision.

James Taranto
321-960-0729
jamestaranto@msn.com

TOWN OF MALABAR

AGENDA ITEM REPORT

AGENDA ITEM NO: 3
Meeting Date: May 20, 2008

Prepared By: Bonilyn Wilbanks-Free, Town Administrator

SUBJECT: Approval of Quasi-Judicial Procedures

BACKGROUND/HISTORY:

Quasi Judicial Procedures are used at specific times by both the legislative body and the Planning and Zoning Board and the Board of Adjustment (BOA). Recently the Town held a BOA meeting and the variance request was denied. The applicant did not feel the proper procedures were followed. After Debby spoke with the Town Attorney, the applicant was offered an opportunity for a rehearing and he accepted. The applicant was advised that he still retains his right to appeal to the Circuit Court.

The Attorney has drafted procedures for use when certain quasi-judicial items come before the Board and Council. Council has directed that the P&Z and BOA review these procedures and offer input before they are formalized into an ordinance.

FINANCIAL IMPACT:

N/A

ATTACHMENTS:

Quasi-Judicial Procedures by Town Attorney

ACTION OPTIONS:

Staff seeks recommendation to Council.

memo

To: Debby Franklin, Town Clerk

Date: April 29, 2008

From: Karl W. Bohne, Jr.

Re: Suggested Procedures for Quasi-Judicial Proceedings

Please allow the following to serve as merely suggestions concerning the conduct of quasi-judicial hearings before the Planning and Zoning Board, Board of Adjustments and Town Council.

I. NATURE OF QUASI-JUDICIAL HEARINGS

Certain standards of basic fairness must be provided in quasi-judicial proceedings. A quasi-judicial hearing meets due process requirements if the parties are provided notice of the hearing and a fair opportunity to be heard in person or through counsel, the right to present evidence and cross-examine witnesses and the right to be informed of all the facts upon which the Board acts.

II. ORDER OF PROCEEDINGS

1. Florida law does not require that witnesses be sworn in at a quasi-judicial hearing. The Board may want to have the witnesses sworn. If it chooses to do so then the Chair directs Clerk or attorney to swear in witnesses en masse.

a. Clerk or attorney has all witnesses stand and swear to the following: "do you swear and affirm that the testimony you will give before the Board or Council will be the truth, the whole truth and nothing but the truth so help you God?" Clerk or attorney announces witnesses have been sworn.

b. The Chair announces that anyone testifying before the Board or Council needs to state their name and address for the record.

2. The Chair should announce that any person desiring to present written documentation, photographs or other documentary evidence must give a copy of the documents to the Clerk and may provide the Board members a copy as well.

3. Chair announces that all ex parte communications and any pre hearing site visitations must be disclosed. Such disclosure shall include the date of the communication and/or site visit, whom the communication and/or site visit was with, and a summary of the communication and /or site visit.

4. Petitioner's presentation:
a. Petitioner or Petitioner's representative may make an opening statement by presenting its position, introducing documentation or other evidence.

b. Petitioner may then call witnesses.

c. Any person desiring to cross-examine Petitioner's witnesses may do so.

5. Testimony and presentation of evidence by the public, either in support or against the Petitioner.

a. Time limit for such presentations by the public shall be (Board or Council to set time limits)_____ minutes.

b. If there is an authorized representative of a group of citizens or public (i.e. a representative of a homeowner's association, condominium association or other type of property association) then that person would be given (Board or Council to set time limits)_____ minutes to present its case on behalf of the property owner's association. Unless there is different testimony to be presented by a member of the same association, no other person within the property owner's association will be permitted to testify. The Board or Council has the discretion to enlarge any time limitations.

c. Cross-examination of any person of the public who has given testimony.

6. Staff's presentation:

a. Staff may make an opening statement.

b. Staff may call witnesses and present evidence.

c. Staff may be cross-examined by any person. Once the evidence has been presented, the Chair shall close the public hearing and bring the matter back to the Board or Council for any additional questions they may have of any person who participated in the public hearing. However, no discussion amongst the Board or Council members shall be made unless and until a motion and a second have been made.

III. BOARD OR COUNCIL DISCUSSES AND VOTES.

1. When a decision is made by a body that has final decision making authority, the Town Attorney shall prepare a written order to be signed by the chairperson and such order shall become final when filed with the Clerk.