

RESOLUTION 29-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, ADOPTING QUASI-JUDICIAL PROCEDURES; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council recognized the need for established procedures to facilitate orderly and respectable Board and Town Council meetings when quasi-judicial items are on the agenda; and

WHEREAS, the Town Council recognizes that this Resolution shall act as a guide and provide a procedure for Town Boards and Council to follow; and

WHEREAS, the Town Council recognizes that the procedures may be amended from time to time by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. Procedures

A copy of the Procedures are attached as Exhibit "A"

SECTION 2. Conflict.

All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. Effective Date.

This Resolution shall take effect immediately upon its adoption.

This Resolution was moved for adoption by Council Member McClelland.

This motion was seconded by Council Member Borton and, upon being put to vote, the vote was as follows:

Council Member Nancy Borton Aye

Council Member Brian Vail Aye

Council Member Charles (Chuck) McClelland Aye

Council Member Jeffrey (Jeff) McKnight Aye

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Council Member Patricia (Pat) D. Dezman

Aye

This Resolution was then declared to be duly passed and adopted this 21st day of July, 2008.

By: TOWN OF MALABAR

Thomas M. Eschenberg

Mayor Thomas M. Eschenberg, Chair
Town of Malabar

Approved for Legal Sufficiency:

Karl W. Bohne, Jr.
Karl Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Debby K. Franklin
Town Clerk/Treasurer

(seal)

(EXHIBIT "A" BEGINS ON NEXT PAGE)

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EXHIBIT "A"**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. Counsel for the Board or Council shall remind the Board or Town Council that the matter before them is a quasi-judicial hearing and that rules of procedures have been adopted governing these proceedings.

2. 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. Counsel for the Board or Council shall advise such body of the need to swear in witnesses. The 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. An attorney shall be present representing the Board or Council at all quasi-judicial proceedings.

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

3. 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.

4. 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.

5. 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.

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6. 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 3 minutes. The Board or Council has the discretion to enlarge any time limitations.

b. If there is an authorized representative of a group of citizens or public, (by way of example and not limitation, a representative of a homeowner's association, condominium association or other type of property association, private clubs, churches, or other governmental agencies) then that person would be given 3 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.

7. 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.

IV. REHEARING/RECONSIDERATION.

There is no specific rule or statutory authority for the rehearing or reconsideration of a local agency decision; however, a local agency has the inherent power and authority to rehear and reconsider a previously entered order. The Town has determined that, notwithstanding this inherent power and authority, no rehearing or reconsideration shall be entertained regarding a previously entered order of any quasi-judicial board of the Town.