



# LEGISLATIVE AND QUASI JUDICIAL DECISIONS

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Town of Lauderdale-By-The-Sea, Florida

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# Legislative

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

# The Legislative Hearing

- o Notice
- o Public hearing
- o Presentation of evidence

# The Legislative Decision

## “Fairly Debatable”

- 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

# Quasi Judicial Proceedings

## Code Section 30-13

- Application of the general policies and rules to specific properties
  - Site specific application of Land Development Regulations (LDRs)

# Quasi Judicial Matters

## Code Section 30-13(c)(1)

- Rezoning
- Site Plans
- Conditional Uses
- Variances
- Plats
- Special Exceptions



# Quasi Judicial Hearing Basic Requirements

- o Notice
- o Hearing before a neutral decision maker
- o Presentation of evidence
- o Sworn testimony
- o Questioning of witnesses



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# Procedures for Quasi Judicial Matters Code Section 30-13(d)(4)

The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:

To call and examine witnesses

- To introduce exhibits
- To cross-examine opposing witnesses on any relevant matter
- To rebut evidence

# Procedures for Quasi Judicial Matters Code Section 30-13(d)(1)

- **Ex-parte communication:**
  - Occurs outside the public hearing
  - One sided (opposition or support)
  - Does not allow the other side an opportunity to respond
  - Can be in any form – written, verbal, electronic, etc.
  
- Opponents must have an opportunity to respond

# Procedures for Quasi Judicial Matters Code Section 30-13(d)(1)

Ex-parte communications are not presumed prejudicial provided 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
- Read written communications
- Investigations, site visits and expert opinions

# Procedures for Quasi Judicial Matters

## Code Section 30-13(d)(3)

### Presentation of Evidence

- All persons testifying must be sworn in.
- 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 can supplement or explain other evidence, but is not sufficient by itself to support a finding.
- Statements by counsel are argument, not testimony.



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# Conduct for Quasi Judicial Matters

## Code Section 30-13(d)(5)

### Order of Hearing

1. Call the proceeding to order.
2. Announce the rules, procedures and swear in all those seeking to testify on the quasi judicial matter.
3. Announce the quasi judicial matter.
4. Petitioner presentation

# Conduct for Quasi Judicial Matters

## Code Section 30-13(d)(5)

5. Town presentation.
6. Parties in support of the petition.
7. Parties in opposition of the petition.
8. Town responses to any party to the proceeding.
9. Final by Petitioner.
10. Final by Town.
11. Deliberation and Vote.



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# Quasi Judicial Decisions

Decisions by the Town in a quasi-judicial capacity are subject to review by certiorari.

A Circuit Court review in certiorari is narrow and limited:

- \* 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.



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# The Quasi Judicial Decision

## **MUST BE BASED ON:**

**“substantial competent  
evidence”**

- o Evidence a reasonable mind would accept as adequate to support a conclusion



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# Quasi Judicial Decision Substantial Competent Evidence

- Official Town records (charter, code, ordinances)
- Expert testimony
- Application materials submitted by the applicant
- All staff reports
- Actions previously taken by other reviewing boards
- Pictures, photographs
- *Fact based* citizen testimony
  - Substantial Competent Evidence from lay witnesses – Citizens – must be “fact based”
  - Subjective preferences are not fact based and do not constitute Substantial Competent Evidence



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**Questions?**

**TOWN CODE OF ORDINANCES**  
**Chapter 30 UNIFIED LAND DEVELOPMENT REGULATIONS**  
**ARTICLE I. IN GENERAL**

**Sec. 30-13. Quasi-judicial proceedings.**

(a) *Intent.* It is the intent of the Town to provide an equitable and efficient manner for the Town to hear matters which are considered quasijudicial in nature. These procedures shall be utilized by the Board of Adjustment, Planning and Zoning Board, and the Town Commission in regards to hearings on quasi-judicial matters in which their body is the final authority.

(b) *Definitions.* As used in this section, the terms listed below shall be defined as follows:

(1) *Affected person* means a person (or persons), natural or corporate, who is the owner of the subject property or who owns property within 300 feet of the subject property as listed in the records of the County Property Appraiser, who resides in or operates a business within 300 feet of the subject property.

(2) *Board* means the Board of Adjustment and Planning and Zoning Board of the Town of Lauderdale-By-The-Sea, Florida.

(3) *Town or Town Commission* means the Town Commission of the Town of Lauderdale-By-The-Sea, Florida.

(4) *Local public official* means any elected or appointed public official holding a Town office and who recommends or takes quasi-judicial action as a member of a board or commission.

(5) *Party or parties* means the petitioner, Town and any affected person who has requested to be heard at the proceeding.

(6) *Quasi-judicial in nature* means the application of a general rule or policy to specific individuals, interests or activities.

(7) *Quasi-judicial proceeding* means a hearing held by a board or the Town Commission to adjudicate private rights of a particular person after a hearing which comports with due process requirements, and makes findings of fact and conclusions of law on the issue.

(8) *Site specific* means an individual piece of real estate which can be clearly defined by street address, legal description or similar means at a single identifiable location.

(9) *Special Master* means the individual(s) retained by the Town to conduct quasi-judicial hearings that would otherwise come before the Town Commission for hearing as contemplated by this section.

(c) *Quasi-judicial matters.*

(1) For the purposes of this section, the following matters, regardless of whether the final determination is made by the Town Commission or a board, shall be considered to be quasi-judicial:

- a. Site specific rezonings and site plans;
- b. Site specific large-scale land use amendments;
- c. Conditional use approvals;
- d. Variances, including, but not limited to, trees, signs, setbacks, distance requirements between buildings or other variances permitted by the Town Code;
- e. Plat approvals; and
- f. Special exceptions which related to the use of land and businesses.

(d) *Procedures for quasi-judicial proceedings.*

(1) Ex-parte communications are not presumed prejudicial provided any disclosure required in subsections (a), (b), or (c) below is made before or during the public meeting at which a vote is taken on the matter.

- a. The substance of any ex-parte communication with a local public official that relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject 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.
- b. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official 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.
- c. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activity 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.

(2) *Notification and required forms to be completed by affected persons, the petitioner and the Town.*

- a. At least 15 calendar days prior to the proceeding, [the] Town shall provide a legal advertisement to be published in a newspaper of general paid circulation in Broward County and of general interest and readership in the community, not one of limited subject matter. Said notice shall state the name of the petitioner for the requested action, the date, time and location of the proceeding, and the location and times where

and when the petition and any back-up information may be reviewed. In addition, the notice shall inform all affected persons that they will be allowed to present evidence at the hearing, bring forth witnesses, and cross-examine witnesses provided they notify and file the required forms provided by the Town Clerk's Office, the substance of which is described in subsection (d) below.

b. No later than 15 calendar days prior to the proceeding, a mail notice containing the same information as the legal advertisement shall be sent to each real property owner within 300 feet of the subject property as each is listed in the records of the County Property Appraiser. Mail notice may be provided by bulk mail, first class mail or certified mail, return receipt requested.

(3) *Presentation of evidence.*

a. All persons testifying before a board or the Town Commission must be sworn in. The petitioner, members of a board or the Town Commission and any affected person who has provided notice that it intends to appear at the proceeding shall be given the opportunity to present evidence, bring forth witnesses, and cross-examine any witnesses.

b. All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible, whether or not such evidence would be admissible in a court of law. However, immaterial or unduly repetitious evidence shall be excluded.

c. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding.

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

e. A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.

f. The Office of the Town Attorney shall represent the Board or the Town Commission. Any questions as to the propriety and admissibility of evidence shall be presented to the Town Attorney's Office in a timely fashion.

(4) *Procedures for quasi-judicial proceedings.* The proceedings shall be conducted in an informal manner in accordance with this section. Each party shall have the right to do the following:

- a. To call and examine witnesses;
- b. To introduce exhibits;
- c. To cross-examine opposing witnesses on any relevant matter; and
- d. To rebut evidence.

(5) *Conduct of quasi-judicial proceedings.* To the extent possible, the following shall be the order of the proceedings:

- a. Call the proceeding to order and announce the beginning of the proceeding. A majority of the Board or Town Commission members must be continuously present during the proceeding.
- b. The matter to be heard and the rules concerning the admissibility of evidence should be announced.
- c. Statements of counsel shall only be considered as argument and not be considered as testimony. Counsel for parties shall not be subject to cross-examination. The Board or the Town Commission shall have the authority to refuse to hear any testimony which is irrelevant or repetitive.
- d. Petitioner, or his or her representative, may make a presentation. The petitioner shall make its presentation first. If the petitioner chooses to make a presentation, it should include a description of the nature of the petition if there is additional information that has not been previously provided to or by the Town. In addition, the petitioner shall introduce any exhibits and witnesses.
- e. The Town shall make its presentation after the petitioner. During its presentation, the Town shall present any staff, Board or other reports on the matter as well as any comments. These reports shall include, but not be limited to, a description of the request of the petitioner; a description/background related to the petition; an analysis which includes the consistency with the Town's Comprehensive Plan, if applicable, and now the petition does or does not meet the requirements of the Town Code; a listing of the exhibits to be presented; a listing of potential witnesses; a summary of the issues; and the staff and Board(s) recommendations. These reports shall include specific findings in support of justifying a recommendation for approval or denial of the petition.
- f. Parties who are in support of the petition shall make their presentation. The parties shall introduce any exhibits and witnesses.
- g. Parties who are in opposition to the petition shall make their presentation. The parties shall introduce any exhibits and witnesses.
- h. Town personnel in attendance shall provide responses to any party to the proceeding.
- i. After each witness testifies or documents are made a part of the record, a party shall be permitted to question the witness. The questioning party is not permitted to make any statements, only to ask questions which are directly related to the testimony presented.

j. Final presentation by petitioner in response to any testimony from other parties.

k. Final presentation by Town in response to any testimony from other parties.

l. The Board or the Town Commission shall deliberate on the petition. No further testimony shall be taken and the members of the Board or the Town Commission shall not ask further questions of persons presenting testimony. The Board or the Town Commission shall discuss the evidence that was presented at the proceeding and vote on the petition.

(6) *Consent process.*

a. All applications for development approvals that are the quasi-judicial matters which are required to be approved by the Town Commission may be placed on the quasi-judicial consent agenda. If an application is not removed from the quasi-judicial consent agenda, the Town Commission shall vote on the quasi-judicial consent agenda based upon the materials in the agenda report(s). Prior to placement on the quasi-judicial consent agenda, all applicants shall sign a notarized statement that the applicant concurs with the staff report and recommendation. If no notarized statement has been obtained from the applicant, then the development approval shall be heard and processed as set forth above.

b. The applicant, any Commission member, or any member of the public may request that an application for a development approval be removed from the quasi-judicial consent agenda and, except as otherwise provided in subsection (c) below, such item shall be continued and shall be scheduled on the next regular Town Commission (non-consent) agenda approximately two weeks after the date it was removed from the quasi-judicial consent agenda or such other date as applicant and Town Commission agree upon.

c. The applicant may request that the Town Commission listen to testimony, receive documentary evidence, and take action on the application at the meeting at which the application is removed from the quasi-judicial consent agenda.

d. All applications for development approval which are placed on a quasi-judicial regular (non-consent) agenda or that have been removed from the quasi-judicial consent agenda shall be heard pursuant to and in accordance with the procedures set forth above.

(7) *Hearings in front of the Board or Town Commission; final determination by the Board or Town Commission.*

a. In reaching a determination as to whether to grant or deny the petition, the Board or Town Commission shall:

- (i) Consider whether the petitioner's request is consistent with the Town's Comprehensive Plan, if applicable;
- (ii) State with specificity the reasons for the approval or denial of the petition. Said approval or denial may, by reference, incorporate the staff, Board or other reports; and
- (iii) State whether or not the order is to be recorded in the public records of Broward County, and if applicable, that the cost of recording shall be paid by the petitioner.

(8) *Preparation of the order.* The Town Attorney's Office shall prepare the final order of the Board or Town Commission based upon the determination. The final order shall include, but not be limited to, the finding of facts, any conditions, requirements or limitations on the approval of the petition, and whether or not the order shall be recorded in the Broward County public records. If an ordinance is required to be adopted upon approval of an action by the Town Commission, a final order will not be prepared unless the petition is denied.

(9) *Continuances and deferrals.* If, in the opinion of the Board or Town Commission, any testimony or documentary evidence or information presented at the proceeding justifies providing additional time to allow additional research or review in order to properly determine the issue presented, the Board or Town Commission shall continue the case to a designated time to allow for the additional research or review. After the decision is made to continue, the date to which the proceeding shall be continued shall be announced at the proceeding.

(10) *Transcription of the quasi-judicial proceedings.* The official record of a proceeding shall be preserved by tape recording or other device by the Town Clerk's Office. Nothing precludes any party from providing a court reporter for the proceeding.

(11) *Maintenance of evidence and other documents.* The Office of the Town Clerk shall retain all of the evidence and documents presented at the proceeding, except for large-scale exhibits which shall be retained by the Town Manager or designee, all which become a part of the public record of the proceeding.

(12) *Appeal of final determination by Board or Town Commission.* The final determination of the Board or Town Commission is subject to judicial review in a court of competent jurisdiction.

(Ord. No. 457, § 1, 12-12-00; Ord. No. 496, § 2, 6-11-02; Ord. No. 2007-14, § 2(Exh. A), 9-25-07; Ord. No. 2007-14, § 2(Exh. A), 9-25-07)

*Editor's note: Formerly numbered as § 1-13.*