

**The Florida Bar
Inquiry/Complaint Form**

PART ONE (See Page 1, PART ONE – Complainant Information.):

Your Name: John Metz
Organization: n/a
Address: 306 Gulf Dr. S.
City, State, Zip Code: Bradenton Beach, FL 34217
Telephone: 619-346-0711
E-mail: metz1419@gmail.com
ACAP Reference No.: none
Does this complaint pertain to a matter currently in litigation? Yes ☐ No ☒

PART TWO (See Page 1, PART TWO – Attorney Information.):

Attorney's Name: Ricinda Perry Florida Bar No.: 556831
Address: 5944 Riverview Blvd
City, State, Zip Code: Bradenton Beach, FL 34209-1800
Telephone: 941-526-6468

PART THREE (See Page 1, PART THREE – Facts/Allegations.): The specific thing or things I am complaining about are: (attach additional sheets as necessary)

This is a case of plagiarism by Ricinda Perry, City Attorney for Bradenton Beach, Florida.

I am a member of the Bradenton Beach Planning and Zoning Board. On June 30, 2017, I, and other members of said board, received an unsolicited email from Ms. Perry regarding the subject of "Quasi-Judicial Hearings".

After reading several paragraphs of said email, it was apparent from the tone, language, and manner that his was not Ms. Perry's style of writing. I did a short internet search and within minutes found the source of the material in THE FLORIDA PLANNING OFFICIALS HANDBOOK (hereinafter "FPOH") which can be found at http://desotobocc.com/images/planning_zoning/FLORIDA_PO_HANDBOOK.pdf.

In her email, Ms. Perry wrote the opening paragraph of five sentences, the last sentence reading "Below is an analysis on procedural due process as it relates to quasi-judicial land use decisions." The inference and implication was that this was her "analysis."

The next 15 paragraphs are a virtual copy from the FPOH (the FPOH text follows below). Occasionally she changed a word such as "Council" to "Commission" since we have a Commission and not a Council here locally. She also changed some wording around the "Snyder decision" since the FPOH included a excerpt of that case and Ms. Perry did not.

She copied the FPOH so religiously that she copied the word "ad-here" hyphenated, though it appeared in the middle of her sentence, but which had been hyphenated in the FPOH because of a margin!

Here is Ms. Perry's email as relayed by the City Clerk:

"Good morning,

See email below.

Thank you,
Terri Sanclemente
City Clerk
City of Bradenton Beach
107 Gulf Drive North
Bradenton Beach, FL 34217
941-778-1005 Ext. 216

From: Ricinda Perry [<mailto:ricinda@verizon.net>]

Sent: Thursday, June 29, 2017 2:59 PM

To: Mayor William Shearon <mayor@cityofbradentonbeach.com>; Commissioner Jake Spooner <ward1@cityofbradentonbeach.com>; Commissioner Marilyn Maro <ward2@cityofbradentonbeach.com>; Commissioner Ralph Cole <ward3@cityofbradentonbeach.com>; Commissioner John Chappie <ward4@cityofbradentonbeach.com>

Cc: Alan Garrett <agarrett@cityofbradentonbeach.com>; Terri Sanclemente (City Clerk) <tsanclemente@cityofbradentonbeach.com>; Steve Gilbert <stevegilbert@cityofbradentonbeach.com>

Subject: Quasi-Judicial Decision-making

Terri, kindly forward this email or print it off for all Planning and Zoning Board members.

All,

It has come to my attention in a recent proceeding that there may be areas of concern regarding procedural due process in quasi-judicial decision-making. I recently learned of a hearing before the Planning and Zoning Board and was asked by the planner and two attorneys representing an applicant a number of questions. These questions revealed that those who were making land use decisions need to be fully educated and informed on land-use procedures and the rules of fair-play. Elected officials were present at the hearing and were likewise concerned on this subject matter, to which, I was authorized to gather information specific to the hearing and told to prepare an appropriate response. Below is an analysis on procedural due process as it relates to quasi-judicial land use decisions.

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals. Broad concepts like "fundamental fairness" frequently become the basis for challenging land use decisions. A quasi-judicial proceeding is akin to appearing in front of a judge in a hearing. The judge has not performed independent research, conducted *ex parte* communications, and is to remain completely impartial prior to hearing the matter, drawing conclusions, and rendering a decision. Essential elements to ensure fairness of a quasi-judicial hearing or decision:

- adequate notice;
- an unbiased decision-maker;
- an opportunity to be heard;
- the right to present evidence;
- prompt decision-making;
- a record of the proceeding; and
- a written decision based on the record and supported by reasons and findings of fact.

Quasi – Judicial Land Use Hearings

Most of the decisions made by the Planning and Zoning Board and City Commission are quasi-judicial in nature. Per one of the most pre-eminent decisions in Florida law, the Snyder decision, once the decision is made on the applicable comprehensive plan policies and land use map designation, all zoning, subdivision and other decisions related to approving development on a parcel are legally considered to be quasi-judicial.

The manner in which procedures and meetings are conducted and the basis for decisions are critical issues for quasi-judicial land use decisions. In particular, a quasi-judicial proceeding must address the following elements to withstand scrutiny under the requirements of procedural due process:

Ex Parte Communication

An *ex parte* communication is a one-on-one communication between an interested party and the decision-maker, outside the presence of the other interested parties and outside of the hearing. An example might be the developer meeting with a member of the City Commission privately and outside the presence of the neighbor who opposes the development (or vice versa – the board member or commission member meeting with the neighbor without the developer present). The law presumes such communications to be prejudicial, because they allow the decision-maker to be exposed to information that may be incorrect in such a manner that other interested parties will not have a chance to correct the error before the decision is made. See, e.g., Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3rd DCA 1991).

Ex parte communication is permissible in relation to a quasi-judicial proceeding only in accordance with procedures adopted by a local government pursuant to Chapter 256, Florida Statutes. The Legislature adopted a statute that attempts to remove the presumption of prejudice resulting from any *ex parte* communication related to a quasi-judicial matter "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 part of the record before the final action on the matter." If the communication is disclosed, then other parties have the chance to correct any errors or offer an alternative viewpoint, and ensure that the decision is based on correct information and full

exposure to all points of view. Inappropriate actions in the realm of *ex parte* communication can potentially invalidate quasi-judicial decisions made by your community and, of equal importance, create an appearance of impropriety and prejudice. *Ex Parte* communication is generally not permissible in quasi judicial proceeding.

Competent-Substantial Evidence

In Florida, the quasi-judicial decisions made by those bodies hearing the matter are to be based on substantial competent evidence and must be consistent with the comprehensive plan.

One definition of competent evidence is "evidence a reasonable mind could accept as adequate to support a conclusion". Competent evidence is generally testimony based on personal observation or testimony by an "expert" who has special knowledge of a relevant topic. For example, when addressing a question of traffic concurrency, the professional opinion of a traffic engineer is competent and may be relied upon as a basis for the decision. The opinion of a lay person who lives near a proposed development is not competent, and may not be relied upon. Neighbor testimony based on personal observation or on facts about which they have relevant knowledge is competent and, in some cases, critical to the decision. ("I have coffee on my porch every morning at 7:30, and consistently observe that the traffic backs up from the intersection to my driveway, a half mile away"). See, e.g., Metropolitan Dade County v. Blumenthal, 675 So. 2d 598 (Fla. 3d DCA 1995).

Both expert and layperson witnesses must testify to the factual basis of their positions and not to their subjective preferences. Florida's courts have also established a strict standard for consistency with the comprehensive plan. Consequently, some evidence accepted as a basis for decision must have bearing on the application's consistency with the comprehensive plan. Evidence relating to specific plan requirements, such as transportation concurrency, is clearly relevant. More ethereal issues, such as how the application might affect local quality of life, may not be relevant unless the comprehensive plan has policies specifically addressing that issue.

Quasi-judicial proceedings provide procedural due process protections not available in legislative proceedings. While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include:

- (1) notice,
- (2) a hearing before a neutral decision-maker,
- (2) presentation of evidence,
- (4) sworn testimony and
- (5) the questioning of witnesses.

Information related to a quasi-judicial proceeding should be available in a timely manner and accessible to all the parties throughout the process. The building and planning department of our City uses an "application file" for this purpose. The application file is a public document that is made available to the public during business hours. The file contains a complete record of the application, including all information submitted by the applicant, all staff reports, all comments and information submitted by other parties interested in the decision, and all actions taken by reviewing or decision-making agencies. This is made available upon submission of a public record's request to the City Clerk.

In a quasi-judicial hearing before a governmental body such as a City Commission, the Mayor or Chair often has a challenging task of ensuring that all parties are adequately heard in a fair and

equitable manner, while facilitating an efficient hearing and avoiding repetitive testimony or public comment that is off the topic and not relevant to the criteria governing the decision. While the Chair should adhere to established procedure, he or she does not have to be rigid. Rather, the hearing should be sufficiently flexible to provide a fair hearing for all parties, including lay persons who may be new to the land use process.

Uniform time limits for general comment are permissible, but the applicant, the planning staff, and any other persons who demonstrate that they are affected parties and wish to provide evidence should be provided sufficient time to put on their case.

Constitutional due process requires the swearing of witnesses. Consequently, most local governments follow this practice. A mass swearing of witnesses at the beginning of the hearing will suffice.

The Florida Supreme Court has also ruled that, in a quasi judicial hearing, all affected parties must be "given a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine witnesses, and the judgment of the agency or board should be contingent upon the showing made at the hearing."

Hearings should be conducted to ensure that cross examination of witnesses is controlled and that the public is not discouraged from testifying while ensuring that all affected parties, as well as the decision-makers, have the opportunity to bring out and explore all relevant facts and testimony. Some communities require all questioning to be through the Chair of the proceedings, in order to assure that it does not become abusive.

Findings of Fact

The Florida courts do not specifically require "findings of fact" to be included in the record of every quasi-judicial decision. However, because quasi-judicial decisions must be based on substantial competent evidence and will be reviewed for strict compliance with the comprehensive plan, Snyder suggests that after-the-fact rationales may not be persuasive to a reviewing court. To assist applicants, interested persons and reviewing courts in determining the factual basis for a decision, the basis for the quasi-judicial decision should be clearly established at a public hearing.

Very often, this is accomplished by moving approval or denial of the item in accordance with the staff report and recommendation, which should contain within it the relevant facts and legal standards for making the decision and may also provide a professional planning recommendation to support the action.

If there is no staff report or the decision maker disagrees with the staff report, then the motion and explanation of the action must be more extensive and provide a proper factual and legal basis, on which the local government can rely in defending its action in court if needed. Such a basis may be found in evidence offered by the applicant or a third party such as an environmental or neighbor group, or in the decision maker's own analysis and interpretation of the facts and legal standards before it at the hearing.

In any case, it is very important to ensure that any relevant commitments by the developer are reflected in the conditions of approval, so that the decision maker does not rely on an oral representation and later find, to its disappointment, that it is unenforceable.

Issues that have arisen by the applicant's planning team were *ex parte* communications, discussions outside the parameters of the Land Development Code, consideration and questions

raised about property not subject to review, issues that are considered and/or regulated by other agencies, and demands for extractions in order to be granted approval. These actions, if challenged, could render the entire process void and open the City up to legal actions. I have not validated the concerns presented to me, but would strongly suggest that the information shared herein, be applied immediately by anyone hearing a quasi-judicial matter. As a practical matter, the LDC was adopted with procedures and criteria, which are mean to provide clear rules for everyone, which helps keep the hearings more manageable and more importantly, defensible. If anyone starts to go too far afield in their comments during a proceeding, they can easily be brought back on track by limiting the discussion to the standards. If they want to object to the standards, they should be directed to a separate process to seek the amendment of the standards set forth in the LDC. Likewise, making sure that one approaches a hearing with an unbiased opinion is critical to a fair hearing. All board members and elected officials should avoid *ex parte* investigations and communications on a matter coming before them to be heard. Please disclose on the record any such actions so that they can be addressed by the applicant – as is his protected right.

Please feel free to contact me if you have any further questions.

Ricinda H. Perry, Esq.

Telephone: (941)526-6468

Facsimile: (941)209-5302

Email: ricinda@verizon.net



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As you can see, Ms. Perry did not use any citation, reference or even quotation marks throughout her email.

Below is her email where by underlining I have identified exactly the wording taken from the FPOH. The words not underlined are Ms. Perry's.

I also used brackets to identify the FPOH's word she left out or substituted for.

"Good morning,

See email below.

Thank you,
Terri Sanclemente
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Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals. Broad concepts like "fundamental fairness" frequently become the basis for challenging land use decisions. A quasi-judicial proceeding is akin to appearing in front of a judge in a hearing. The judge has not

performed independent research, conducted *ex parte* communications, and is to remain completely impartial prior to hearing the matter, drawing conclusions, and rendering a decision.

Essential elements to ensure fairness of a quasi-judicial hearing or decision:

- adequate notice;
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- a written decision based on the record and supported by reasons and findings of fact.

Quasi – Judicial Land Use Hearings

Most of the decisions made by the Planning and Zoning Board and City Commission [HB used “planning officials”] are quasi judicial in nature. Per one of the most pre-eminent decisions in Florida law, the [HB used “As noted in the discussion of”] Snyder decision [HB used “above”], once the decision is made on the applicable comprehensive plan policies and land use map designation, all zoning, subdivision and other decisions related to approving development on a parcel are legally considered to be quasi judicial.

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Ex parte communication is permissible in relation to a quasi-judicial proceeding only in accordance with procedures adopted by a local government pursuant to Chapter 256, Florida Statutes. The Legislature adopted a statute that attempts to re- move the presumption of prejudice resulting from any ex parte communication related to a quasi-judicial matter “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 part of the record before the final action on the matter.” If the communication is disclosed, then other parties have the chance to correct any errors or offer an alternative viewpoint, and ensure that the decision is based on correct information and full exposure to all points of view. Inappropriate actions in the realm of ex parte communication can potentially invalidate quasi-judicial decisions made by your community and, of equal

importance, create an appearance of impropriety and prejudice. *Ex Parte* communication is generally not permissible in quasi judicial proceeding.

Competent-Substantial Evidence

In Florida, the quasi-judicial decisions made by those bodies hearing the matter [instead of "planning officials"] are to be based on substantial competent evidence and must be consistent with the comprehensive plan.

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Information related to a quasi-judicial proceeding should be available in a timely manner and accessible to all the parties throughout the process. The building and planning department of our City [in place of HB "Many communities"] uses an "application file" for this purpose. The application file is a public document that is made available to the public during business hours. The file contains a complete record of the application, including all information submitted by the applicant, all staff reports, all comments and information submitted by other parties interested in the decision, and all actions taken by reviewing or decision-making agencies. This is made available upon submission of a public record's request to the City Clerk.

In a quasi-judicial hearing before a governmental [instead of HB's "collegial"] body such as a City Commission [instead of HB's "Council"], the Mayor or Chair often has a challenging task of ensuring that all parties are adequately heard in a fair and equitable manner, while facilitating

an efficient hearing and avoiding repetitive testimony or public comment that is off the topic and not relevant to the criteria governing the decision. While the Chair should adhere to established procedure, he or she does not have to be rigid. Rather, the hearing should be sufficiently flexible to provide a fair hearing for all parties, including lay persons who may be new to the land use process.

Uniform time limits for general comment are permissible, but the applicant, the [*instead of HB's "local government"*] planning staff, and any other persons who demonstrate that they are affected parties and wish to provide evidence should be provided sufficient time to put on their case.

[Ms. Perry removed wording "Although there may be some debate and the cases are not conclusive"] Constitutional due process requires the swearing of witnesses. Consequently, most local governments follow this practice. A mass swearing of witnesses at the beginning of the hearing will suffice.

The Florida Supreme Court has also ruled that, in a quasi judicial hearing, all affected parties must be "given a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine witnesses, and the judgment of the agency or board should be contingent upon the showing made at the hearing." Hearings should be conducted to ensure that cross examination of witnesses is controlled and that the public is not discouraged from testifying while ensuring that all affected parties, as well as the decision-makers, have the opportunity to bring out and explore all relevant facts and testimony. Some communities require all questioning to be through the Chair of the proceedings, in order to assure that it does not become abusive.

Findings of Fact

The Florida courts do not specifically require "findings of fact" to be included in the record of every quasi-judicial decision. However, because quasi-judicial decisions must be based on substantial competent evidence and will be reviewed for strict compliance with the comprehensive plan, Snyder suggests that after-the-fact rationales may not be persuasive to a reviewing court. To assist applicants, interested persons and reviewing courts in determining the factual basis for a decision, the basis for the quasi-judicial decision should be clearly established at a public hearing.

Very often, this is accomplished by moving approval or denial of the item in accordance with the staff report and recommendation, which should contain within it the relevant facts and legal standards for making the decision and may also provide a professional planning recommendation to support the action.

If there is no staff report or the decision maker disagrees with the staff report, then the motion and explanation of the action must be more extensive and provide a proper factual and legal basis, on which the local government can rely in defending its action in court if needed. Such a basis may be found in evidence offered by the applicant or a third party such as an environmental or neighbor group, or in the decision maker's own analysis and interpretation of the facts and legal standards before it at the hearing

In any case, it is very important to ensure that any relevant commitments by the developer are reflected in the conditions of approval, so that the decision maker does not rely on an oral representation and later find, to its disappointment, that it is unenforceable. [*End of plagiarism*]

Issues that have arisen by the applicant's planning team were *ex parte* communications, discussions outside the parameters of the Land Development Code, consideration and questions raised about property not subject to review, issues that are considered and/or regulated by other agencies, and demands for extractions in order to be granted approval. These actions, if challenged, could render the entire process void and open the City up to legal actions. I have not validated the concerns presented to me, but would strongly suggest that the information shared herein, be applied immediately by anyone hearing a quasi-judicial matter. As a practical matter, the LDC was adopted with procedures and criteria, which are mean to provide clear rules for everyone, which helps keep the hearings more manageable and more importantly, defensible. If anyone starts to go too far afield in their comments during a proceeding, they can easily be brought back on track by limiting the discussion to the standards. If they want to object to the standards, they should be directed to a separate process to seek the amendment of the standards set forth in the LDC. Likewise, making sure that one approaches a hearing with an unbiased opinion is critical to a fair hearing. All board members and elected officials should avoid *ex parte* investigations and communications on a matter coming before them to be heard. Please disclose on the record any such actions so that they can be addressed by the applicant – as is his protected right.

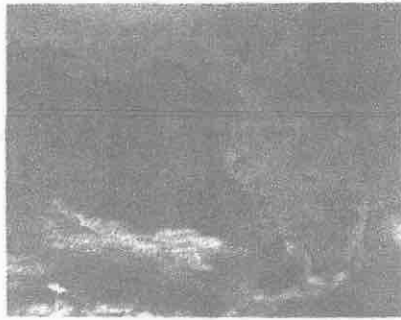
Please feel free to contact me if you have any further questions.

Ricinda H. Perry, Esq.
Telephone: (941)526-6468
Facsimile: (941)209-5302
Email: ricinda@verizon.net

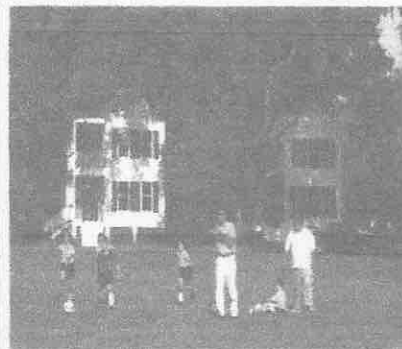


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Here is The Florida Planning Officials Handbook, cover and Chapter II, pages 28 through 34.



Florida Planning Officials Handbook



Florida Resilient Communities Initiative
University of Florida

October 2015

tice of its potential impacts on them, and thus are not motivated to take advantage of any hearing provided to raise their concerns, or may unintentionally violate it. Vague drafting also leaves the door open to arbitrary and discriminatory enforcement. Thus, it is not only good practice to ensure that a code of ordinances is written in plain English so it is easier to administer and enforce, it is also required by the Constitution.

If a land use regulation is to be enforceable, it cannot be unconstitutionally vague. People enforcing the regulation, and those affected by it, must have a sense of the nature and extent of the regulation and the conduct it permits or prohibits. For example, a city adopted a design review ordinance that called for buildings to be "in good relationship" with the surrounding views, have "appropriate proportions" and "harmonious colors," and be "interesting." In the transition between the old town and a nearby development area, the court found the design review commission could not express the code requirements in anything other than personal preferences. As such, the code as applied to the building in question was unenforceable.

If a local government is to avoid a claim of vagueness, it must create a standard (in words and pictures, if needed) that permits those involved in the process to understand what is expected or required.

An even higher decree of clarity is demanded when the law in question threatens First Amendment or other fundamental constitutional rights.

Courts will always try to find a way to avoid the constitutional issue if possible, but in cases of vagueness, doubts are resolved in favor of the person affected by the law. Sometimes, the court can narrow the effect of a law by a clarifying interpretation, to cure a vagueness problem that appears on the face of the statute, but governments should not rely on this happening.

Procedural Due Process in Quasi-Judicial Decision Making

Procedural due process is intended to ensure

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Hagason
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Skipped →
This ¶

that government acts in a fundamentally fair and reasonable manner when making decisions that affect private individuals. Broad concepts like "fundamental fairness" frequently become the basis for challenging land use decisions." *Ricinda added here 2 sentences*

Procedural due process is intended to ensure that government acts in a fundamentally fair and reasonable manner when making quasi-judicial decisions.

"Essential elements to ensure fairness of a quasi-judicial hearing or decision:

- adequate notice;
- an unbiased decision-maker;
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Quasi – Judicial Land Use Hearings

Most of the decisions made by *planning officials* are quasi judicial in nature. As noted in the discussion of *Snyder* above, once the decision is made on the applicable comprehensive plan policies and land use map designation, all zoning, subdivision and other decisions related to approving development on a parcel are legally considered to be quasi judicial.

The manner in which procedures and meetings are conducted and the basis for decisions are critical issues for quasi judicial land use decisions. In particular, a quasi-judicial proceeding must address the following elements if it is to withstand scrutiny under the requirements of procedural due process:

**Ex Parte Communication
Substantial Competent Evidence
Conduct of the Hearing**

Findings of Fact

Ex Parte Communication

An ex parte communication is a one-on-one communication between an interested party and the decisionmaker, outside the presence of the other interested parties and outside of the hearing. An example might be the developer meeting with a member of the City Council privately and outside the presence of the neighbor who opposes the development (or vice versa - the councilwoman meeting with the neighbor without the developer present). The law presumes such communications to be prejudicial, because they allow the decisionmaker to be exposed to information that may be incorrect in such a manner that other interested parties will not have a chance to correct the error before the decision is made. See, e.g., *Jennings v. Dade County*, 589 So. 2d 1337 (Fla. 3rd DCA 1991).

Ex parte communication is permissible in relation to a quasi judicial proceeding only in accordance with procedures adopted by a local government pursuant to Chapter 256, Florida Statutes. The Legislature adopted a statute that attempts to remove the *presumption of prejudice* resulting from any ex parte communication related to a quasi-judicial matter "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 part of the record before the final action on the matter." If the communication is disclosed, then other parties have the chance to correct any errors or offer an alternative viewpoint, and ensure that the decision is based on correct information and full exposure to all points of view.

*Recommend
left out*

If your community does not have an ordinance establishing guidelines for ex parte communications during quasi-judicial proceedings, you should discuss the adoption of such an ordinance with your city or county attorney. Inappropriate actions in the realm of ex parte communication can potentially invalidate quasi-judicial decisions made by your community and, of equal importance, create an appearance of impropriety and prejudice.

Substantial Competent Evidence

Ex Parte communication is generally not permissible in quasi-judicial proceeding

In Florida, the quasi-judicial decisions made by *planning officials* are to be based on *substantial competent evidence* and must be consistent with the comprehensive plan.

One definition of competent evidence is "*evidence a reasonable mind could accept as adequate to support a conclusion*". Competent evidence is generally testimony based on personal observation or testimony by an "expert" who has special knowledge of a relevant topic. For example, when addressing a question of traffic concurrency, the professional opinion of a traffic engineer is competent and may be relied upon as a basis for the decision. The opinion of a lay person who lives near a proposed development is not competent, and may not be relied upon. Neighbor testimony based on personal observation or on facts about which they have relevant knowledge is competent and, in some cases, critical to the decision. ("I have coffee on my porch every morning at 7:30, and consistently observe that the traffic backs up from the intersection to my driveway, a half mile away"). See, e.g., *Metropolitan Dade County v. Blumenthal*, 675 So. 2d 598 (Fla. 3d DCA 1995).

Both expert and layperson witnesses must testify to the factual basis of their positions and not to their subjective preferences. Florida's courts have also established a strict standard for consistency with the comprehensive plan. Consequently, some evidence accepted as a basis for decision must have bearing on the application's consistency with the comprehensive plan. Evidence relating to specific plan requirements, such as transportation concurrency, is clearly relevant. More ethereal issues, such as how the application might affect local quality of life, may not be relevant unless the comprehensive plan has policies specifically addressing that issue.

Conduct of the Hearing

Quasi-judicial proceedings provide procedural due process protections not available in legislative proceedings. While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (2) presentation of evidence, (4) sworn

testimony and (5) the questioning of witnesses.

Information related to a quasi-judicial proceeding should be available in a timely manner and accessible to all the parties throughout the process. ~~Many communities use an "application file" for this purpose.~~ The application file is a public document that is made available to the public during business hours. The file contains a complete record of the application, including all information submitted by the applicant, all staff reports, all comments and information submitted by other parties interested in the decision, and all actions taken by reviewing or decision-making agencies.

Decisions must be based on "substantial competent evidence"

In a quasi-judicial hearing before a collegial body such as a City Council, the Mayor or Chair often has a challenging task of ensuring that all parties are adequately heard in a fair and equitable manner, while facilitating an efficient hearing and avoiding repetitive testimony or public comment that is off the topic and not relevant to the criteria governing the decision. While the Chair should adhere to established procedure, he or she does not have to be rigid. Rather, the hearing should be sufficiently flexible to provide a fair hearing for all parties, including lay persons who may be new to the land use process.

Uniform time limits for general comment are permissible, but the applicant, local government planning staff, and any other persons who demonstrate that they are affected parties and wish to provide evidence should be provided sufficient time to put on their case.

Ricinda left out

~~Although there may be some debate and the cases are not conclusive,~~ most attorneys agree that constitutional due process requires the swearing of witnesses. Consequently, most local governments follow this practice. A mass swearing of witnesses at the beginning of the hearing will suffice.

The Florida Supreme Court has also ruled that, in a quasi judicial hearing, all affected parties must be "given a fair opportunity to be heard in accord with the basic requirements of due process, including the right to present evidence and to cross-examine witnesses, and the judgment of the agency or board should be contingent upon the showing

tation and later find, to its disappointment, that it is unenforceable. 40

Quasi judicial proceedings provide due process protections not available in legislative proceedings.

While the Florida courts have not precisely specified what is required, the basics of due process are generally accepted to include (1) notice, (2) a hearing before a neutral decision-maker, (3) presentation of evidence, (4) sworn testimony and (5) the questioning of witnesses

Summary

Ms. Perry copied many pages of material and never cited the source or even put quotation marks around the material. She passed it off as her analysis. I have no knowledge as to what she charged the City for this 'work'. (She bills hourly.)

The Florida Bar's "Florida's Standards for Imposing Lawyer Sanctions"
Approved November 1986 by the Florida Bar's Board of Governors, and updated May 2015 states:

"5.13 Public reprimand is appropriate when a lawyer knowingly engages in any other conduct that involves dishonesty, fraud, deceit, or misrepresentation and that adversely reflects on the lawyer's fitness to practice law.

Commentary

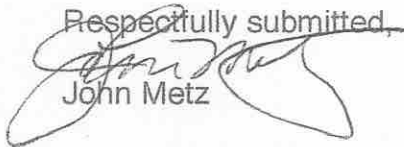
....
There can be situations, however, in which the lawyer's conduct is not even criminal, but, because it is directly related to his or her professional role, discipline is required. For example, in In re Lamberis, 93 Ill. 2d 222, 443 N.E. 2d 549 (1982), the court imposed censure [public reprimand] on a lawyer who knowingly plagiarized two published works in a thesis submitted in satisfaction of the requirements for a master's degree. The court noted that although the lawyer's conduct might appear to be 'fairly distant from the practice of law,' discipline was 'appropriate and required because both the extent of the appropriated material and the purpose for which it was used evidenced the respondent's complete disregard for values that are most fundamental in the legal profession' (443 N.E. 2d at 551). Specifically, the lawyer's plagiarism displayed 'an extreme cynicism toward the property rights of others, and a 'lack of honesty which cannot go undisciplined, especially because honesty is so fundamental to the functioning of the legal profession' (443 N.E. 2d at 551-52)."

Also see the discipline case IN THE SUPREME COURT OF FLORIDA (Before a Referee) The Florida Bar v. Rafael Gonzalez, Case No. SC07-2314 and SC08-434 www.floridasupremecourt.org/clerk/briefs/2008/401-600/08-434_ROR.pdf.

In case SC08-434, the "Respondent admits that he created the article in question by copying text from previously-published articles by the author without permission." The Referee recommended that "Respondent be found guilty of violating Rule 4-8.4(c) (conduct involving dishonesty)..."

Ms. Perry's plagiarism should be disciplined.

Respectfully submitted,

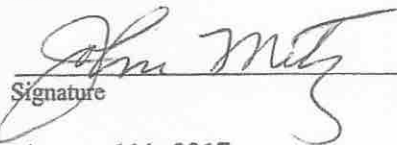

John Metz

PART FOUR (See Page 1, PART FOUR – Witnesses.): The witnesses in support of my allegations are: [see attached sheet].

PART FIVE (See Page 1, PART FIVE – Signature.): Under penalties of perjury, I declare that the foregoing facts are true, correct and complete.

John Metz

Print Name



Signature

August 11, 2017

Date

Appendix: Part Four Witnesses

Myself and the email recipients of Ms Perry's email and the recipients of the City Clerks forwarding email.