



Meeting Name: Town Council Meeting
Meeting Date: January 22, 2025
Prepared By: Leonard G. Rubin, Town Attorney
Item Title: Resolution No. 2025-01 (Amending the Town's Quasi-Judicial Procedures)

DISCUSSION:

At the Town Council's October 23, 2024 meeting, I presented four revisions to the Town's quasi-judicial procedures for the Council's consideration: (1) prohibiting members of the Town Council and the Planning and Zoning Board from engaging in private oral or written communications with the Applicant or the Applicant's agent prior to the completion of the quasi-judicial hearing; (2) adding site visits to the definition of ex parte communications; (3) changing the order of the hearing to comply with current practice by requiring the disclosure of ex parte communications prior to Town Staff's presentation; and (4) adding a provision stating the Council and the Board shall not entertain any requests for rehearing or reconsideration of a quasi-judicial order.

The Town Council expressed no issues with revisions number 2 and 3; however, at the conclusion of the discussion, the Town Council, by consensus directed the following revisions:

- A. Allow members of the Town Council and Planning and Zoning Board to privately meet with the Applicant or the Applicant's agents when accompanied by a member of Town Staff (incorporated into Section 2.A);
- B. Require two public workshops for all major projects (new commercial, multi-family residential, mixed use, and planned unit developments) prior to any quasi-judicial proceeding (incorporated into Section 8); and
- C. Allow the Town Council and Planning and Zoning Board to rehear or reconsider a quasi-judicial order prior to the expiration of the 30-day appeal period or the filing of a petition for writ of certiorari, whichever is earlier (incorporated into Section 15).

In addition to the foregoing, Councilmember Davis proposed numerous additional revisions to the quasi-judicial procedures (a copy of Councilmember Davis's October 17, 2024 e-mail is included as additional back up). Because there was no Council consensus on these recommendations, they have not been included in the revised procedures. These additional revisions are summarized as follows, along with my comments on each):

- Add a provision allowing public participation so long as comments are on topic and not repetitive.
Comment: Under the current provisions, members of the public are considered “participants” and have the full right to participate in the hearing.
- Add a provision that members of the Town Council and the Planning and Zoning Board may not testify for or against a project unless they have recused themselves from the vote.
Comment: I agree that members of the Town Council should not testify at the Planning and Zoning Board meeting on quasi-judicial matters that will come before the Council for a final determination. However, there is nothing to prevent a member of the Planning and Zoning Board from testifying at the Council level in his or her capacity as a Town resident because the Board has already provided its recommendation to the Council.
- Require the Town Clerk to provide an ex parte communication list to be included within the record of the proceeding, with all or part of these comments being read into the record or summarized. Additionally, have the Town adopt an ex parte communication form that must be completed by each member of the Town Council and Planning and Zoning Board, which will be made part of the record.
Comment: No issue with either recommendation – Council decision.
- If a mailing was received by the Town Council or received by one member of the Town Council and forward to the remaining members, the Town Clerk will include this information as part of the record.
Comment: No issue with the recommendation – Council decision.
- Require Town Staff to act as a neutral fact-finder in its presentation and “the cadence of speech, tone, and vocabulary must be objective as to discerning competent substantial evidence that the projects either meets the Town Code requirements or does not,” and allow the Mayor or Councilmembers to move to cancel or reschedule the hearing if the Staff presentation is perceived as advocating on behalf of the project.
Comment: The role of Town planning staff is to give its professional opinion as to whether the proposed project either meets or does not meet the applicable Code requirements. Determining that a project meets the Code requirements is not advocating on behalf of a project. Courts have determined that testimony given by professional planning staff constitutes competent, substantial evidence to support the legislative body’s decision on a quasi-judicial application. Mere opinion expressed by residents, on the other hand, is not competent, substantial evidence. Therefore, the findings of the Town’s planning staff play an important role in the quasi-judicial process and staff’s ability to provide their professional opinions and recommendations should not be hampered or restricted. Additionally, staff’s role goes beyond “fact finding” in determining whether more subjective criteria, such as determining whether a proposed project is in harmony with the surrounding area. Finally, neither the Town Council nor the Planning and Zoning Board is required to accept Staff’s recommendation and the Council or Board may base its decision on other competent, substantial evidence presented at the hearing and made part of the record.
- Allow the Applicant sufficient time to present based on the complexity of the project (with special permission for more than one hour), and give the participants (or members of the public) the same amount of time as given to the Applicant.
Comment: The thirty minutes currently granted to the Applicant is likely too restrictive. Realistically, the Town has given the Applicant whatever amount of time required to make a full presentation. Members of the public should be limited to the standard three minutes (or whatever

amount of time the Council deems sufficient). As referenced above, comments from members of the public are generally more opinion-based than fact-based. Nevertheless, the Council may wish to consider granting persons with a special interest (such as those residing in close proximity to the project) elevated status as a party to the proceeding, which would allow them to actually present their case and even provide expert testimony. Many municipalities do have such a provision, and I have included North Palm Beach's procedures as additional back up (referenced language is highlighted).

RECOMMENDATION:

Town Staff requests Town Council consideration of Resolution 2025-01 amending the Town's quasi-judicial procedures.