

GUIDELINES FOR QUASI-JUDICIAL PROCEEDINGS BEFORE THE INDIAN RIVER COUNTY BOARD OF COUNTY COMMISSIONERS (“BOARD”)

General Guidelines

These guidelines are for information purposes only, and shall not impose upon the Board any legal requirements greater than those imposed by applicable law. The Board is authorized to deviate from these guidelines, provided the resulting procedure complies with applicable law. No deviation from these guidelines shall be considered a failure of the Board to follow its own rules, policies or procedures. These guidelines are intended for contested quasi-judicial proceedings. County staff is specifically authorized to place uncontested quasi-judicial matters on the consent agenda, in which case the agenda package shall be deemed to be admitted into evidence in support of the Board’s decision.

Parties

The parties to a quasi-judicial proceeding shall be the county, the applicant or person whose property or interests are directly involved in the matter (“applicant”), and, if applicable, any person or entity which has formally intervened in the proceeding (“intervener”). A person or entity seeking intervener status shall (i) request such status as early in the proceedings as possible and, in any event, no later than at the commencement of the hearing, and (ii) demonstrate a substantial interest which may be adversely effected by the Board’s decision in a manner different in kind or greater in degree than the public at large. Any person or entity required to be notified of the application under applicable land development regulations (e.g., adjacent property owners or owners of property within a certain distance – usually 300 feet - of the subject property) shall be deemed to have a substantial interest sufficient for intervener status.

Pre-Hearing Matters

1. **Notice to Commissioners.** As soon as county staff becomes aware of a quasi-judicial matter which will probably come before the Board for decision, staff shall notify the commissioners of this fact, by email or other acceptable means. The notice shall set forth the matter and the nature of the issues involved, and shall generally remind commissioners of the requirements of these guidelines.
2. **Ex Parte Communications.** Unless otherwise prohibited by statute or ordinance, and subject to disclosure guidelines set forth below, each commissioner shall make his or her own decision whether to engage in ex parte communications with county staff, parties or other interested persons. The public is reminded that significant legal consequences may attach to ex parte communications and, to protect the process from legal challenge, commissioners may elect in good faith to avoid ex parte communications.

3. Site Visits, Investigations and Expert Opinions. Unless otherwise prohibited by statute or ordinance, and subject to the disclosure guidelines set forth below, each commissioner shall make his or her own decision whether to make site visits, conduct investigations or consult with experts.

Hearing Matters

1. Fair and Impartial Decisions-Makers. Each commissioner shall keep an open mind and shall base his or her decision on the evidence presented at the hearing and the applicable law. Accordingly, commissioners should refrain from making any public statements prior to the hearing, for or against the application. If, because of conflict of interest, bias or other factors, a commissioner does not have an open mind and cannot base his or her decision on the evidence and applicable law, the commissioner should advise the Board of this fact, and withdraw from any further participation in the proceedings.

2. Commissioner Disclosures. If a commissioner has engaged in ex parte communications (written or verbal, including communications with county staff), made any site visits, conducted any investigations, or consulted with any experts prior to the hearing, the commissioner shall disclose such ex parte communications, site visits, investigations or consultations at the start of the hearing. Specifically, (i) with respect to ex parte communications (including consultations with experts), the commissioner shall disclose the subject of the communication and the identity of the person or group with whom the communication took place. If the communication was in writing and was actually read by the commissioner, a copy of the written communication shall be given to county staff and included in staff's file on the matter. The written communication shall be available for public inspection prior to the hearing, shall be given by county staff to the clerk at the start of the hearing, and shall be made a part of the record, and (ii) with respect to site visits and other investigations, the commissioner shall disclose the fact of such visits and investigations, and any findings made or information obtained. Any commissioner disclosing such matters shall confirm at the start of the hearing that he or she has an open mind and is able to base his or her decision on the evidence presented at the hearing and the applicable law. (Note: County staff's report which is included in the Board's agenda package shall not be considered an ex parte communication).

3. Procedural Decisions. In accordance with §102.02 of the Code of Indian River County, all questions of procedure shall be decided by the Chairperson, subject to an appeal by a commissioner to a majority of the Board.

4. Rules of Evidence. The formal rules of evidence shall not apply. Generally, any evidence which is relevant to the issues will be admissible, and concerns relating to the reliability or trustworthiness of the evidence (e.g., hearsay) will go to the weight to be given the evidence. Objections to evidence shall be resolved as a procedural decision by the Chairperson, with the advice of the County Attorney, or his designee ("County Attorney").

5. Role of the County Attorney. The County Attorney shall represent the Board, providing advice as necessary with respect to legal issues. The County Attorney shall not represent county staff or advocate the county staff's position.

6. Decorum of Proceedings. Quasi-judicial proceedings are serious, business meetings of the Board, and all parties and other participants are expected to act in a courteous and respectful manner. Loud, rude or disruptive behavior, or outbursts in support of or opposition to statements made by others, will not be tolerated. The Chairperson, with the assistance of the County Attorney, shall maintain the decorum of the proceedings.

7. Order of Proceedings. After commissioner disclosures and confirmations, the order of proceedings shall be as follows:

- a. Open the Public Hearing.
- b. Witnesses Sworn In. The clerk collectively swears in all persons who plan to testify in the hearing. Attorneys appearing for a party shall not be required to be sworn in; however, the statements of an attorney who is not sworn in shall be considered argument on behalf of his or her client, but shall not be considered evidence;
- c. Questions from Commissioners. Commissioners are encouraged to ask questions or raise issues during the parties' presentations, so that all parties have an opportunity to present evidence and argument addressing the questions or issues.
- d. County Staff's Presentation. County staff makes its presentation and each party has an opportunity to cross-examine staff. Unless there is an objection and the objection is sustained, the agenda package and any power point presentation made by staff shall deemed to be admitted into evidence;
- e. The Applicant's Presentation. The applicant makes his or her presentation and each party has an opportunity to cross-examine the applicant's witnesses;
- f. Each Intervener's (if any) Presentation. Each intervener (if any) makes his or her presentation and each party has an opportunity to cross-examine the intervener's witnesses;
- g. Input from Members of the Public. Members of the public who were sworn in by the clerk address the commission. Each party shall have an opportunity to cross-examine members of the public; however, parties are reminded that members of the public are not parties to the proceeding, and while the parties shall have the right to cross-examine on all relevant issues, parties shall refrain from cross-examination which is harassing or rude to members of the public;

- h. Final Presentations by the Parties. Each party has a final opportunity to present evidence, in the following order: county staff, each intervener (if any) and the applicant, who shall have the right to make the final presentation;
- i. Final Arguments by the Parties. Each party has an opportunity to present final arguments to the Board, in the following order: county staff, each intervener (if any) and the applicant, who shall have the right to make the final argument;
- j. Record. The Chairperson confirms that all records and other tangible evidence have been admitted into evidence and are in the hands of the clerk;
- k. Close the Public Hearing.

Decision by the Board

1. Decision. The Board deliberates and makes its decision based on substantial, competent evidence presented at the hearing and the applicable law.
2. Substantial, Competent Evidence. “Substantial” evidence is evidence which provides a factual basis from which a fact in issue may reasonably be inferred. “Competent” evidence is evidence which is sufficiently relevant and material to the ultimate question that a reasonable person would accept it as adequate to support the conclusion reached. Relevant, fact-based statements, whether from experts or not, generally constitute competent evidence. General statements of support or opposition to a project, standing alone, do not constitute competent evidence.
3. Essential Requirements of Applicable Law. The Board’s decision shall also be consistent with the essential requirements of applicable law. The County Attorney will advise the Board with respect to the essential requirements of applicable law.
4. Written Order. If the decision of the Board is required by law to be set forth in a written order, the order shall promptly be prepared by county staff, signed by the Chairperson and filed with the clerk.

SAMPLE NOTICE OF UPCOMING QUASI-JUDICIAL MATTER

To: Board of County Commissioners

This is to advise of a quasi-judicial matter which may/will come before the Board. The applicant is _____ and the matter is _____. Please remember that

- If you engage in any ex parte communications, you must be prepared to disclose at the hearing the subject of the communications and the identity of the person or group with whom the communications took place;
- If you engage in any site visits or other investigations, you must be prepared to disclose at the hearing the fact of such visits or investigations, and any findings made and information obtained; and
- If you receive and actually read any written communications, you must promptly give a copy of the written communications to the planning department staff.

Also, please remember that you must keep an open mind on the matter and base your decision on substantial, competent evidence presented at the hearing, and applicable law. Accordingly, you should refrain from making public statements prior to the hearing, for or against the application.

Approved September 6, 2011