

## Resident's Guide to Quasi-Judicial Hearings

The purpose of this Resident's Guide to Quasi-Judicial Hearings is to assist residents in understanding how to participate in a quasi-judicial process within the City of Venice. It is intended as a tool for any individual who has no particular expertise in the law concerning the review and approval of petitions for things such as rezonings, site plans, special exceptions, and variances, whether before the City Council, Planning Commission, or Historic and Architectural Preservation Board. Residents who wish to participate in these proceedings should have a basic understanding of their function, the rules relative to how decisions are made, and how to effectively participate to either oppose or support an application.

### What does Quasi-Judicial mean?

The Florida Supreme Court has determined that rezonings, preliminary plats, site plan approvals, special exceptions, variances and similar types of development approvals must follow a quasi-judicial decision process versus a legislative decision process. A legislative process is one in which policy is created by a legislative body (e.g. the City Council). Amendments to the Comprehensive Plan and Land Development Regulations are considered legislative decisions. A quasi-judicial process is the application of policy (e.g. City Code) to a fact situation.

There are rules and standards set forth in the City Code of Ordinances ("Code") regarding the criteria that must be met in order to have a land development application approved, including what must be in the application and what the standards are for reviewing these applications. The facts of the application are applied to the standards set forth in the Code, and the decision is then made.

Quasi-judicial proceedings have some of the elements of a judicial or court proceeding; therefore, the term "quasi-judicial." In a legislative proceeding, the City Council can take into account anything that it considers important to help it make its decision, including the popularity or public acceptance of a particular policy. In a quasi-judicial proceeding, the City Council and the City boards are not allowed to take into consideration the popularity of a particular development proposal or request; they can only consider the competent and substantial evidence before the board or the City Council.

### What is competent and substantial?

As was said previously, the only evidence that the City Council or board can consider in a quasi-judicial process is that which is both competent and substantial. The term "competent" means that the person is qualified to give evidence on that subject. If special training or specialized knowledge is required, it is necessary for the person testifying to prove that person's competency to testify as an expert on a particular subject. Examples of this would be (1) traffic impacts or traffic counts would be testified to by a traffic engineer; (2) whether a desired use may impact the land values of surrounding property could be testified to by a certified property appraiser; (3) whether the building of a wall or other barrier will destroy a wetland could be testified to by an environmental consultant or engineer. These people have specific academic degrees or specialized training that qualifies them to testify as "experts," and that is what is meant by

competent testimony; i.e., they are "competent" because they are particularly knowledgeable because of their training and/or experience in a particular field or subject matter.

If you want to testify to a matter that requires special academic degrees or specialized training, you must make those degrees and that training known to the board before whom you are testifying, and you would normally present a résumé or other material detailing your specialized knowledge or training.

"Substantial" means that there is sufficient, relevant and credible evidence upon which to base a decision.

### **Testimony by lay persons**

Citizens who want to participate in a quasi-judicial process cannot testify as to matters which would require expert testimony, but they can testify as to factual matters and any element of the case that would not require specialized training or specific academic degrees. The courts are becoming more generous in allowing lay testimony on certain subjects.

### **It's not a popularity contest**

The City Council or the board considering a quasi-judicial matter must make its decision based on the testimony before it. Other than common knowledge, they cannot consider anything that they encounter outside of the public hearing on the application. Theoretically at least, "politics" can play no part in the decision-making process.

Bringing 50 people to the hearing all wearing the same color t-shirt or carrying signs or some other type of demonstration of popular support or opposition is not supposed to be taken into consideration by the members of the City Council or the board. Clapping and cheering in support of the statements of someone testifying is not supposed to occur. Asking everyone to stand up who is in favor of or in opposition to the application has been held by the courts to be improper.

It doesn't make any difference who has the most people and supporters at the hearing. It is the quality, persuasiveness, the relevancy of the testimony and the credibility of the witnesses presented to the board (and which become part of the record of the proceedings) that will make the case.

### **The record is everything**

It is the record established at the hearing that will determine the outcome of the case. There must be competent and substantial evidence presented at the hearing to support the decision of the board. Without competent and substantial evidence in the record of the proceeding on which decision-makers can rely, the decision is subject to being overturned by a court.

Appeals to sympathy using non-relevant testimony (my mother-in-law is sick, I've been a resident of the City for 50 years, etc.) cannot be used to support a position you are taking either for or against the application. You must look to the standards of the Code and supply testimony, either lay or expert, that is relevant, credible and oriented toward the standards set forth in the Code. Everything else is irrelevant and would legally have to be ignored by the decision-makers.

### **Should I get a lawyer?**

It is possible for citizen groups or people in opposition to an application to prepare and present a good case, but it is not easy. If the matter is important to you and you think it will impact your property values or your life in some significant way, you may be well advised to employ a land-use attorney to assist you in the preparation and presentation of the case. The attorney will understand what the standards are and what type of evidence will be required to make a good record to protect a favorable decision or to appeal an unfavorable decision.

Organization of your presentation (with or without an attorney) is of paramount importance. Testimony should not be repetitive and should be relevant to the standards of the Code. Remember, although we live in a democracy, this is not a democratic process – it is a legal process. The City Council or the board is not going to take a poll and decide that more people are in favor than are against, or vice versa. They are going to make their decision on the basis of the testimony before them. In a quasi-judicial hearing, the board members must be neutral decision makers – above politics or outside influences.

### **Organize early**

If you intend to oppose an application, get involved in the process as early as you possibly can. You need to understand the type of testimony that you should present. You need to understand the issues that are relevant to the case. You need to interact with City staff as soon as possible so that you can get a copy of the application and any other information presented by the applicant. The City staff qualify as experts in the field of planning, and their testimony regarding an application will be important. If you don't agree with the staff, you must present facts and testimony in opposition to the staff and the applicant's witnesses.

Since this is not a political process, contacting the City Councilmembers or board members about a quasi-judicial hearing will be of no benefit and could be deemed inappropriate. Councilmembers and board members are directed to have no communications with anyone about a pending application since they are required to be neutral decision makers. They should consider evidence that is testified to under oath and matters of common knowledge. Should a Councilmember or board members speak to anyone about an application that comes before them, they are required to disclose that conversation, including who it was with and what was said, prior to the commencement of the quasi-judicial hearing.

Writing a letter rather than appearing at the hearing and testifying is of very limited value since the applicant has a right to cross examine witnesses whose testimony is to be considered by the City Council or the board. You cannot cross examine a letter; therefore, except in very unusual circumstances, the board or the City Council cannot take these letters into account. If the matter is important to you, you must attend the hearing and testify.

### **What happens at the hearing?**

[Section 2-53 of the City Code](#) describes the procedure that will be followed by the City in conducting a quasi-judicial hearing, including the order of presentations and when public comment will be taken. If you wish to speak during the public comment portion of the hearing, you must submit a speaker card (generally found near the entrance to the Council Chambers) to

the clerk before the hearing begins. Each member of the public is provided 5 minutes in which to speak. When the Clerk calls your name, proceed to the table in front of the dais, sit in one of the chairs, and speak towards the microphone on the table. There is also a timer that the Clerk will set that has a green light when you begin, yellow light when you are nearing the end of your speaking time, and red light when your time is up. You must stop speaking and return to your seat when the red light comes on. It is natural to be nervous when speaking before a group of people, especially if it is something you don't regularly do. Don't make personal attacks, and please be civil and courteous.

Keep in mind that some applications that come before the Planning Commission or Historic and Architectural Review Board for a quasi-judicial hearing will result only in a *recommendation* to City Council and not a final decision. In those cases, the City Council will then conduct its own quasi-judicial hearing at a later date and while it will take into consideration the recommendation of the board, the City Council must base its decision on the testimony and evidence presented to it during the hearing it conducts.

### **Affected party status and designated representatives**

Any person or entity who believes they have an interest in the application which is different than the public at large can seek affected party status by completing an application supplied by the City Clerk at least 3 business days prior to the hearing. The City Council or board will consider requests for affected party status at the beginning of the hearing. If granted, the person or entity receives additional participation rights at the hearing, such as having the same amount of time for a presentation as the applicant and city and the right to cross-examine any witnesses that testify at the hearing. Also understand that an affected party and any of its witnesses can be cross-examined by other affected parties, the applicant, and the city.

Another option is to seek designated representative status. This is available to members of the public, an association, corporation, legal entity, or group who wish to communicate the same message or provide the same competent substantial evidence to the city via a designated representative to speak on the members' behalf, rather than individual members of the group speaking. Designated representatives must submit a written list of the members they represent and shall verify that the representative speaks on behalf of those members. Members of the public on the written list cede their time for public comment to the designated representative, who is granted additional time to speak based on the number of members represented.

A person cannot be both an affected party and a designated representative. If a person is granted affected party status or is a designated representative, they are not permitted to also speak during the public comment period.

### **Final thoughts**

Start organizing early. Stay in touch with the City staff. Get copies of the application and all relevant documents — they are public records and you are entitled to them. Be well organized — contact other people who may have an interest in the matter and elicit their assistance and participation. Know the City Code standards against which the matter will be judged by the board or the City Council. Provide competent and substantial evidence as to each one of those

standards as well as you can. Get the help that you need from an attorney, a planner, an engineer, a property appraiser or anyone else who can give you the expert testimony assistance that you need to make a good presentation before the board and a good record in the proceedings. Don't discuss the matter with the board members or the members of the City Council in advance of the hearing. Telling them of your support or opposition to the application during an encounter at the grocery store, is of no help to your case. You must present your testimony at the hearing for them to consider your thoughts.

To request affected party status or to be a designated representative, please click here [Request for Affected Person Status](#).

To make a records request, please click here [Support Home Page \(mycusthelp.com\)](#).

To obtain a copy of a particular application going before the Planning Commission or Historic and Architectural Review Board, contact the Planning and Zoning Department. To obtain a copy of a particular application going before City Council, contact the City Clerk's Office.

City of Venice  
401 W. Venice Avenue  
Venice, FL 34285  
Telephone: (941) 882-2626  
Planning and Zoning Department Email: [PlanningUsers@Venicefl.gov](mailto:PlanningUsers@Venicefl.gov)  
City Clerk's Office Email: [CityClerkUsers@Venicefl.gov](mailto:CityClerkUsers@Venicefl.gov)

***This guide is not intended to be legal advice. To determine your legal rights and to understand more fully how to participate in a quasi-judicial proceeding, you should contact legal counsel.***