



RESIDENT'S GUIDE TO A QUASI-JUDICIAL PROCESS

The purpose of this Resident's Guide to the Quasi-Judicial Process is to assist residents in understanding how to participate in the quasi-judicial processes within the City of North Miami. It is intended as a tool for any individual who has no particular expertise in the law concerning the granting of development permits, site plan approvals, special exceptions, variances, and similar types of proceedings before the City Council, Planning Commission and Board of Adjustment. Residents who wish to participate in proceedings before these boards should have a basic understanding of their function, the rules relative to how they make decisions and how to effectively participate in these proceedings to either oppose or support quasi-judicial applications before the City Council and City boards.

WHAT DOES QUASI-JUDICIAL MEAN?

Several years ago, the Florida Supreme Court changed the law on rezoning, site plan approvals, special exceptions, variances and similar types of development approvals from a *legislative* decision process to a *quasi-judicial* decision process. A legislative process is one in which policy is created by a legislative body (the City Council). A quasi-judicial action is when the facts of a particular situation are applied to the policy (ordinance). Essentially, a quasi-judicial process is the application of policy to a fact situation.

Typical quasi-judicial proceedings are those in which a property owner makes an application to the City for a rezoning, site plan approval, a special exception or variance. There are rules and standards set forth in the ordinances regarding the criteria that has to be met in order to get a special exception or a variance, what has to be included in the site plan, and what the standards are for reviewing these applications. The facts of the case are applied to the standards set forth in the ordinance, and the decision is then made.

The proceedings before these boards in a quasi-judicial matter are somewhat like a court proceeding; therefore, the term "quasi-judicial." They have some of the elements of a judicial or court proceeding.

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 for variance or special exception; 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 environmentalist 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 your 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 members of the board can rely, the decision of the board is subject to being overturned by a court.

Appeals to sympathy using non-relevant testimony (my mother-in-law is sick, I just lost my job, I've been a resident of the City of North Miami 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 ordinance and supply testimony, either lay testimony or expert testimony, on each of the **standards of the ordinance**. The testimony must be relevant, credible and oriented toward the standards set forth in the ordinance. Everything else is irrelevant and would legally have to be ignored by the members of the board.

SHOULD I GET A LAWYER?

It is possible for citizen groups or persons 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 ordinance. 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 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. You have an entitlement to a neutral decision maker. You have an entitlement to cross-examine witnesses. Some people can do this successfully but many cannot. Having an attorney on your side may give you the extra quality of presentation necessary to prevail.

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. You need to know what position the staff will take at the hearing. The City staff qualify as experts in the field of planning, and their testimony either for or against the application will be important. If you don't agree with the staff, you must present facts and testimony in opposition to the staff's recommendation and the applicant's witnesses. Since this is not a political process, contacting the City Councilmembers about a hearing before a quasi-judicial board will be of no benefit.

Contacting the City Council about a quasi-judicial matter that will come before the City Council although not in violation of the City's ordinances could be deemed inappropriate. Councilmembers should not talk to people who are for or against the 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 Council decide to speak to anyone who is for or against an application that comes before them, they are required to disclose that the conversation took place 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.*

FINAL THOUGHTS

Start early. Stay in touch with the City staff. Get copies of the application and all relevant documents — they are public records and you are absolutely 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 ordinance 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.

If you would like to participate in a quasi-judicial hearing, need further information about the quasi-judicial process, relevant City ordinances, and the contents of applications, contact the City of North Miami's Community Planning & Development Department (CP&D) at 305-895-9825 or CPD@NorthMiamiFL.gov. Quasi-Judicial Hearing applications are available at online. During business hours, applications may also be picked-up in-person at the CP&D Department, located at 12400 NE 8 Avenue North Miami, FL 33161.

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.