

WORKSHOP

Quasi-Judicial Polices And Procedures

1:30 P.M.

Tuesday, March 25, 2008

Leon County Board of County Commissioners
Chambers, 5th Floor, Leon County Courthouse

This document distributed: March 19, 2008

Board of County Commissioners

Workshop Item

Date of Meeting: March 25, 2008

Date Submitted: March 19, 2008

To: Honorable Chairman and Members of the Board

From: Herbert W. A. Thiele, Esq. 
County Attorney

Subject: Quasi-Judicial Policies and Procedures

Statement of Issue:

Conduct Workshop on Quasi-Judicial Policies and Procedures.

Background:

On January 23, 2008, the County Attorney's Office held a meeting with the Commission Aides and County Administration to explain the quasi-judicial procedures. At the Board's meeting of January 29, 2008, Chairman Jane Sauls requested that a workshop be scheduled on quasi-judicial policies and procedures with regard to the Board of County Commissioners' role in reviewing and acting on certain land use matters that come before the Board.

Analysis:

It has been over 13 years since the Florida Supreme court rendered its landmark decision in the case of Board of County Commissioners of Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993), which changed how local governments review and process land development applications, particularly those regarding rezonings and site and development plan approvals. In quashing the ruling of the Fifth District Court of Appeal, the Florida Supreme Court held that the clear and convincing evidence standard was too restrictive, thus abandoning the old standby rule of "fairly debatable," and further decided that the proper standard of review should be "competent substantial evidence." The Florida Supreme Court likewise determined that the old rule, i.e., that these decisions were legislative in nature, was inconsistent with the requirements set out in Florida's Growth Management Act as enacted in 1985. Pursuant to the Florida Supreme Court's decision in Snyder, the process for considering rezoning applications and site and development plan approvals now involve quasi-judicial considerations and standards.

Options:

1. Accept report of the County Attorney's Office on quasi-judicial policies and procedures.
2. Do not accept report of the County Attorney's Office on quasi-judicial policies and procedures.
3. Board direction.

Recommendation:

Option #3.

Attachments:

1. Land Use/Zoning & Practice & Procedures Before Local Government Legislative and Quasi-Judicial Bodies speech by Herbert W. A. Thiele, Esq.
2. Ordinance No. 07-27.
3. Leon County Policy No. 03-05.

HWAT:eaI

**LAND USE/ZONING & PRACTICE & PROCEDURES BEFORE LOCAL
GOVERNMENT LEGISLATIVE AND QUASI-JUDICIAL BODIES**

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County Attorney
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I. INTRODUCTION

It has been over 13 years since the Florida Supreme Court rendered its landmark decision in the case of Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993), which changed how local governments review and process land development applications, particularly those regarding rezonings and site and development plan approvals. In quashing the ruling of the Fifth District Court of Appeal, the Florida Supreme Court held that the clear and convincing evidence standard was too restrictive, thus abandoning the old standby rule of “fairly debatable,” and further decided that the proper standard of review should be “competent substantial evidence.” The Florida Supreme Court likewise determined that the old rule, i.e., that these decisions were legislative in nature, was inconsistent with the requirements set out in Florida’s Growth Management Act as enacted in 1985. Pursuant to the Florida Supreme Court’s decision in Snyder, the process for considering rezoning applications and site and development plan approvals now involve quasi-judicial considerations and standards.

II. HISTORICAL PATH TO SNYDER

Historically, the general rule on the enactment of zoning ordinances or ordinances rezoning land had been that such actions were viewed as a legislative act. See e.g. Board of County Commissioners of Leon County v. Monticello Drug Co., 619 So. 2d 361 (Fla. 1st DCA 1993); Muchado v. Musgrove, 519 So. 2d 629 (Fla. 3d DCA 1988); Rinker Materials Corporation v. Metropolitan Dade County, 528 So. 2d 904 (Fla. 3d DCA 1987); Florida Land Company v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983); Gulf and Eastern Development Company v. City of Ft. Lauderdale, 354 So. 2d 57 (Fla. 1978); County of Pasco v. J. Dico, Inc., 343 So. 2d 83 (Fla. 2d DCA 1977); Harris v. Goff, 151 So. 2d 642 (Fla. 1st DCA 1963).

However, this method was not destined to last, and its demise did not come without some forewarning. There were several cases just prior to the Florida Supreme Court’s decision in Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469 (Fla. 1993), that were indicative of how the courts in Florida were changing their views in this matter.

For example, the Fifth District Court of Appeal set forth the position in the case of ABG Real Estate Development Company of Florida, Inc. v. St. Johns County, Florida, 608 So. 2d 59 (Fla. 5th DCA 1992), that the zoning authority must produce clear and convincing evidence in order to defeat a landowner’s prima facie showing of entitlement to a particular use of his land. A short time later,

the Fifth District Court of Appeal reiterated this same position in the case of Snyder v. Board of County Commissioners of Brevard County, 545 So. 2d 65 (Fla. 5th DCA 1991).

The Fourth District Court of Appeal likewise followed the lead of the Fifth District Court of Appeal, holding that the processing of site plans reviewed by local governments had been completely modified to be quasi-judicial. Park of Commerce Associates and Land Resources Investment Company v. City of Delray Beach, et. al., 606 So. 2d 633 (Fla. 4th DCA 1992), aff'd, 636 So. 2d 12 (1994). In this case, the Fourth District Court of Appeal specifically overturned its prior decision in City of Boynton Beach v. VSH Realty, Inc., 443 So. 2d 452 (Fla. 4th DCA 1984), by finding that the procedure for site and development plan review was administrative, and thus quasi-judicial in nature. Therefore, the de novo trial granted by the trial court (at which the City prevailed) was held to be improper.

However, in the case of Lee County v. Sunbelt Equities, II, Ltd. Partnership, 619 So. 2d 996 (Fla. 2d DCA 1993), the Second District Court of Appeal disagreed that local governments had to show "clear and convincing" evidence rather than "substantial competent" evidence. Even though it adopted the functional analysis of the Snyder decision by the Fifth District Court of Appeal, the Second District Court of Appeal determined that an existing zoning classification was enacted in furtherance of a legitimate and public purpose. Thus, the public interest was legitimately served by continuing the existing classification.

Then, in the case of Board of County Commissioners of Leon County v. Monticello Drug Company, 619 So. 2d 361 (Fla. 1st DCA 1993), the First District Court of Appeal specifically rejected the Snyder decision held by the Fifth District Court of Appeal, and instead reaffirmed that rezoning decisions were legislative in nature. See also Florida Land Co. v. City of Winter Springs, 427 So. 2d 170 (Fla. 1983); Schauer v. City of Miami Beach, 112 So. 2d 838 (Fla. 1959); City of Jacksonville Beach v. Grubbs, 461 So. 2d 160 (Fla. 1st DCA 1984), rev. den. 469 So. 2d 749 (Fla. 1985).

These differing opinions by the district courts of appeal caused much confusion. In order to establish consistency in the courts, the Florida Supreme Court reviewed Snyder and decided on the quasi-judicial method, to be supported with "competent substantial evidence." The "root" case involved in expounding this stricter view was Fasan v. Board of County Commissioners, 264 Or. 574, 506 P.2d 23 (1973).

III. STANDARD OF REVIEW

Under Sunbelt, the standard of review was the lesser standard of "fairly debatable" evidence to support the local government's decision. However, pursuant to the Florida Supreme Court's decision in Snyder, the more difficult "competent substantial evidence" standard now applies. See Metropolitan Dade County v. Section 11 Property Corporation, 719 So. 2d 1204 (Fla. 3d DCA 1998), rev. den. 735 So. 2d 1287 (Fla. 1999). Subsequent review by an appellate court would then only address whether due process was afforded and whether the correct law was applied. Id.; see

also Education Development Center v. West Palm Beach, 541 So. 2d 106 (Fla. 1989); City of Deerfield Beach v. Vaillant, 419 So. 2d 624 (Fla. 1982).

In the case of Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089 (Fla. 2000), the Florida Supreme Court explained that the correct standard of review for the circuit court in reviewing a decision of a quasi-judicial body was the three-prong standard set forth in the case of City of Deerfield Beech v. Vaillant, 419 So. 2d 624 (Fla. 1982), which involves determining (1) whether procedural due process was accorded, (2) whether the essential requirements of the law were observed, and (3) whether the administrative findings and judgment are supported by competent substantial evidence. 761 So. 2d at 1092, citing Vaillant, 419 So. 2d at 626.

Then, when reviewing the circuit court's judgment, the district court of appeal should apply a two-pronged standard of review, which is (1) whether procedural due process was accorded, and (2) whether the correct law was applied. Id. As summarized by the First District Court of Appeal in City of Jacksonville Beach v. Marisol Land Dev. Corp., 706 So. 2d 354, 355 (Fla. 1st DCA 1998):

The standard of review in certiorari proceedings in a district court of appeal when it reviews the circuit court's order under Florida Rule of Appellate Procedure 9.030(b)(2)(B) ... has only two discreet components. The inquiry is limited to whether the circuit court afforded procedural due process and whether the circuit court applied the correct law.

(Citations omitted.)

On the other hand, the district court "may not review the record to determine whether the underlying decision is supported by competent, substantial evidence." Florida Power & Light Co. v. City of Dania, 761 So. 2d 1089, 1092-93 (Fla. 2000). Further, second-tier certiorari review is not a second appeal. Miller v. Hernando County, 931 So. 2d 172 (Fla. 5th DCA 2006).

In the case of Marion County v. Priest, 786 So. 2d 623 (Fla. 5th DCA 2001), rev. den 807 So. 2d 655 (Fla. 2002), the Fifth District Court of Appeal explained the meaning of the terms "substantial competent evidence." For "substantial" evidence to also constitute "competent" evidence, the evidence relied upon should be "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." 786 So. 2d at 625. The Fifth DCA determined that the fact-based testimony of property owners who opposed the special use permit was admissible evidence and could be considered substantial competent evidence.

The "competent substantial evidence" standard of review in quasi-judicial proceedings would apparently place the initial burden upon the landowners/applicants to demonstrate that their request for a rezoning complies with the procedural requirements of the particular zoning code, and the use sought is consistent with the local comprehensive plan. Such a showing gives the landowners/applicants a prima facie case that they are entitled to use their property in the manner they seek. The burden then shifts to the opposing governmental agency, which must present testimony and evidence to prove by competent substantial evidence that a legitimate public purpose

requires maintaining the existing zoning designation. This standard, adopted by the Florida Supreme Court in Snyder, while difficult, is at least easier to satisfy than the “presumptively entitled” burden suggested previously by the Fifth DCA in Snyder v. Board of County Commissioners of Brevard County, 595 So. 2d 65 (Fla. 5th DCA 1991).

IV. STANDARD OF REVIEW: ADDITIONAL CASES

1. By applying the law rendered in the Florida Power & Light Co. v. City of Dania decision, the First District Court of Appeal in City of Jacksonville Beach v. Car Spa, Inc., 772 So. 2d 630 (Fla. 1st DCA 2000), concluded that the circuit court incorrectly reweighed evidence and substituted its judgment for that of the Planning Commission. In this case, Car Spa filed an application for a conditional use permit, and following a public hearing and the presentation of evidence, the Planning Commission denied the permit. The circuit court subsequently quashed the decision of the Planning Commission. However, upon appeal, the First District reversed, and instructed on remand that “the circuit court shall determine whether the record before it contains competent substantial evidence supporting the Planning Commission’s decision to deny the conditional use, without reweighing the evidence, or substituting its judgment for that of the Planning Commission.”

2. In the case of Dusseau v. Metro. Dade County Board of County Commissioners, 794 So. 2d 1270 (Fla. 2001), the Florida Supreme Court again explained the tiers of certiorari review as outlined in Florida Power & Light Co. v. City of Dania. First, the Florida Supreme Court agreed with the District Court of Appeal that the circuit court departed from the essential requirements of law when it reweighed evidence and substituted its own judgment. (In fact, instead of reviewing the Commission’s decision to determine whether it was *supported* by competent substantial evidence, the circuit court apparently reviewed the decision to see if it was *opposed* by competent substantial evidence. 794 So. 2d at 1275). The Florida Supreme Court further noted that the District Court also erred when it reviewed the evidence, as the second-tier certiorari review precludes the district court from assessing the record evidence. In other words, the “competent substantial evidence” component is part of the first tier of review, but not the second tier of review. In rendering its opinion in the Dusseau case, the Florida Supreme Court stated as follows:

We reiterate that the “competent substantial evidence” standard cannot be used by a reviewing court as a mechanism for exerting covert control over the policy determinations and factual findings of the local agency. Rather, this standard requires the reviewing court to defer to the agency’s superior technical expertise and special vantage point in such matters. The issue before the court is not whether the agency’s decision is the “best” decision or the “right” decision or even a “wise” decision, for these are technical and policy-based determinations properly within the purview of the agency.

794 So. 2d at 1276. Thus, as long as the record contains competent substantial evidence to support the agency’s decision, the agency’s decision is presumed lawful and the circuit court’s job is over.

3. The Fifth District Court in Orange County v. Lust, 602 So. 2d 568 (Fla. 5th DCA 1992), rev. den. 613 So. 2d 6 (Fla. 1992), similarly concluded that a circuit court's review is only done to ascertain whether the judgment of the authority is supported by competent substantial evidence. The trial court is not allowed to decide the case on the merits, but only to review the record for the requisite evidentiary support for the decision of the board.

4. In the case of Town of Manalapan v. Gyongyosi, 828 So. 2d 1029 (Fla. 4th DCA 2002), the Fourth DCA held that the trial court improperly conducted a de novo review of the local zoning board's decision denying landowners the permission to construct boat docks. In this case, the trial court overturned the zoning board's decision, finding that competent substantial evidence supported the landowners' contention that a zoning change was consistent with the town's zoning plan. On appeal, the Fourth DCA determined that the trial court had engaged in a reweighing of evidence, substituting its judgment for that of the local planning agency, rather than in determining whether there was competent substantial evidence to support the town's conclusion that the zoning change was inconsistent with the zoning plan. The Fourth DCA then directed the circuit court to reconsider the town's petition and to apply the standard of review set forth in City of Deerfield Beach v. Vaillant.

5. A similar situation occurred in the case of Town of Juno Beach v. McLeod, 832 So. 2d 864 (Fla. 4th DCA 2002). In this case, the circuit court quashed the town's rezoning decision. On appeal, the Fourth DCA quashed the circuit court's order, finding that the circuit court had reweighed the evidence, failed to apply the correct law, and failed to apply the correct standard of certiorari review.

6. Likewise, in Sarasota County v. BDR Investments, LLC, 867 So. 2d 605 (Fla. 2d DCA 2004), the circuit court quashed Sarasota County's denial of a rezoning petition. The Second DCA then quashed the circuit court's decision, and held that the circuit court failed to apply the correct law. The Second DCA found that the circuit court did not consider whether competent substantial evidence supported the board's determination that the requested rezoning did not comply with the applicable zoning ordinance's procedural requirements, nor did the court consider whether there was a legitimate public purpose behind maintaining the existing zoning classification. 867 So. 2d at 608.

7. In the case of Brasota Mortgage Company, Inc. v. Town of Longboat Key, 865 So. 2d 638 (Fla. 2d DCA 2004), the Second DCA found that the circuit court did not apply the correct law when it apparently utilized the second-tier standard of review, rather than the required first-tier standard of review, in reviewing the denial of a request for approval of a subdivision plat by the planning and zoning board. In this case, the circuit court's order did not set forth the reasons for dismissing the property owner's writ of certiorari, other than to state that the petitioner failed to demonstrate a preliminary basis for relief. In addition, the circuit court's order cited cases which set forth the standard of review in second-tier certiorari proceedings, rather than first tier review which is a matter of right. 865 So. 2d at 640.

8. In the case of City of Hialeah Gardens v. Miami-Dade Charter Foundation, Inc., 857 So. 2d 202 (Fla. 5th DCA 2003), the Fifth DCA quashed the decision of the circuit court, finding that the circuit court had substituted its judgment as to the weight of the evidence for that of the City Council. The Fifth DCA held that competent substantial evidence supported the City's finding that the proposed special exception use resolution, which would have permitted construction of an elementary school on what was characterized as one of the busiest, most congested roadways in Miami-Dade County, did not meet the City's published criteria.

9. In another case, Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003), the Florida Supreme Court quashed the decision of the Third District Court of Appeal, and held that the District Court exceeded the proper scope of second-tier review when it, sua sponte, found that portions of the county code were facially unconstitutional. The background of this case involved an application by Omnipoint for an "unusual use" exception to the Miami-Dade County zoning ordinances in order to erect a 148-foot (fourteen-story) telecommunications monopole. Although county staff recommended that the zoning board approve the request, the zoning board denied the application, finding as follows:

[T]he requested modification, ... unusual use, ... and non-use variance of zoning regulations ... would not be compatible with the area and its development and would not be in harmony with the general purpose and intent of the regulations and would not conform with the requirements and intent of the Zoning Procedure Ordinance and the requested unusual use ... would have an adverse impact upon the public interest and should be denied without prejudice.

863 So. 2d at 197, 198.

On certiorari review, the circuit court quashed the zoning board's decision, holding that the board's decision was unsupported by competent, substantial evidence, and further, constituted unlawful discrimination under the Federal Communications Act. On second-level certiorari review, the Third DCA found no error in the circuit court's opinion. However, the Florida Supreme Court subsequently found that the Third DCA exceeded the proper scope of review when it, sua sponte, declared the ordinances in question unconstitutional, and the case was remanded.

Upon remand, the Third District Court of Appeal held that the trial court could not consider the Federal Telecommunications Act when considering the petition for certiorari, and that the District Court of Appeal could not review the sufficiency of the evidence to support the zoning board's decision, but rather could only review whether the trial court applied the correct law to the information offered to the zoning board as evidence. Thus, the County's petition for writ of certiorari was denied. Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 195 (Fla. 2003).

10. The case of Verizon Wireless Personal Communications, L.P. v. Sanctuary at Wulfert Point Community Association, Inc., 916 So. 2d 850 (Fla. 2d DCA 2005), involved a dispute over the City of Sanibel's approval of an application to place a telecommunications tower on City-owned

property. The tower was to be located on property that already housed a wastewater treatment facility. The City approved the application based on its 1999 telecommunications ordinance, which encouraged the placement of towers in "telecommunications tolerant areas," which included the subject property. A neighboring homeowners' association opposed the application and filed a petition for certiorari in circuit court. The homeowners' association argued that a prior settlement agreement between the City and the developer, and the resulting PUD ordinance, governed the development of the parcel. The association also argued that using the property for a telecommunications tower was contrary to the plat's existing use designation as a wastewater treatment plant. The circuit court agreed on all points, and further held that the City was equitably estopped from approving Verizon's application.

A petition for writ of certiorari was then filed by Verizon. The Second District Court of Appeal granted the petition and quashed the circuit court's order, holding as follows: (1) that the City Council was obligated to apply its telecommunications ordinance when deciding whether to grant the application; (2) that the dedication of the property for wastewater treatment did not preclude the city from allowing the tower; and (3) that the circuit court's application of equitable estoppel was a departure from the essential requirements of law.

V. LEGISLATIVE VS. QUASI-JUDICIAL

As explained by the Florida Supreme Court in Board of County Commissioners of Brevard County v. Snyder, 627 So. 2d 469, 474 (Fla. 1993):

It is the character of the hearing that determines whether or not board action is legislative or quasi-judicial. Generally speaking, legislative action results in the *formulation* of a general rule of policy, whereas judicial action results in the *application* of a general rule of policy.

(Citations omitted.) There are still some decisions which remain legislative rather than quasi-judicial.

A. Comprehensive Plan Amendments.

1. In the case of Section 28 Partnership, Ltd. v. Martin County, 642 So. 2d 609 (Fla. 4th DCA 1994), rev. den., 654 So. 2d 920 (Fla. 1995), referred to as *Section 28 Partnership I*, Martin County had refused to approve an application to amend its Comprehensive Growth Management Plan and Future Land Use Map, which would have enabled the developer to develop a parcel of land as a PUD. The developer then sought certiorari relief in the circuit court, which was denied. The Fourth District Court of Appeal also denied the developer's petition for writ of certiorari, concluding that the county's decision to deny the Comprehensive Plan amendment was a legislative or policy making decision under Snyder, rather than quasi-judicial, and that the trial court did not err in concluding that certiorari relief was not available.

The subject parcel consisted of 638 acres and was bordered on two sides by a state park and a river preserve area. The District Court determined that, considering the pristine nature of the land in the park and around the river, the size of the park, and the use of the area by the public, the changes sought by the developer involved matters of policy and were thus subject to review under the “fairly debatable” standard. *Id.* at 612.

The same parties came before the Fourth District Court again in the case styled Martin County v. Section 28 Partnership, Ltd., 676 So. 2d 532 (Fla. 4th DCA 1996), *rev. den.* 686 So. 2d 581 (Fla. 1996), *cert. den.* 117 S. Ct. 1553 (1997). This time the trial court found that Martin County’s denial of the Partnership’s development request involved the application of adopted policy, which led the court to view the county’s decision as a quasi-judicial action. The trial court also found that the county’s refusal to grant the applications for development approval was arbitrary and capricious, and granted the developer injunctive relief and awarded damages in a total amount of \$200,000. The Fourth District Court of Appeal reversed and remanded, holding that the trial court committed reversible error because it was obliged to review the county’s denial of the application for an amendment to the comprehensive plan and future land use map under the “fairly debatable standard,” which was applicable to a review of legislative action.

After nearly a decade of litigation, this matter finally reached a conclusion. On remand, the circuit court held that the county’s refusal to grant the developer’s requested comprehensive plan amendments denied the developer substantive due process, and awarded the developer \$4,750,000 in damages. The Fourth District Court of Appeal again reversed, and remanded for judgment to be entered in favor of Martin County. Martin County v. Section 28 Partnership, Ltd., 772 So. 2d 616 (Fla. 4th DCA 2000), *rev. den.* 794 So. 2d 606 (Fla. 2001), *cert. den.* 122 S. Ct. 922 (2002). The Fourth District Court of Appeal concluded that the case involved a legislative planning decision by the county to “maintain the status quo” in its comprehensive plan, and that there was abundant evidence supporting the county’s decision, which was based upon a legitimate interest in maintaining low densities in an environmentally sensitive area and accomplishing growth management goals for the subject property and the county as a whole. Further, as there was evidence in support of both sides of a comprehensive plan amendment, it was difficult to determine that the county’s decision was anything but “fairly debatable.” *Id.* at 621. Further review of this decision was denied by both the Florida Supreme Court and United States Supreme Court.

2. In City Environmental Services Landfill, Inc. of Florida v. Holmes County, 677 So. 2d 1327 (Fla. 1st DCA 1996), the First District Court upheld the trial court’s decision that most comprehensive plan amendments were legislative decisions. Petitioner was seeking to add a new element to the county’s comprehensive plan to allow for landfills. The amendment was to have created an entirely new land use category that would have a county wide environmental impact, and was not site specific. Therefore, the Court found that the county’s decision to reject the comprehensive plan amendment was legislative and should be evaluated under the fairly debatable standard.

3. The 5th DCA in Younger v. City of Palm Bay, 697 So. 2d 589 (Fla. 5th DCA 1997), upheld the position that decisions not to amend the comprehensive plan were legislative and not

quasi-judicial, thus certiorari was unavailable to review such decisions. The appropriate procedural device would be an action for declaratory judgment or injunction.

4. Also, early in 1995 the Fourth District Court found that the City of Delray Beach was performing a legislative, rather than a quasi-judicial, function when it established a redevelopment area in JFR Investment v. Delray Beach Community Redevelopment Agency, 652 So. 2d 1261 (Fla. 4th DCA 1995).

5. In Martin County v. Yusem, 664 So. 2d 976 (Fla. 4th DCA 1995), the District Court certified this question to the Supreme Court: Can a rezoning decision which has limited impact under Snyder, but **does** require an amendment to the comprehensive land use plan, still be a quasi-judicial decision subject to strict scrutiny review? The Fourth DCA felt that this case was distinguishable from Martin County v. Section 28 Partnership, Ltd., 676 So. 2d 532 (Fla. 4th DCA 1996), rev. den. 686 So. 2d 581 (Fla. 1996), cert. den. 117 S.Ct. 1553 (1997), because of the location of the land, and the fact that the amendment would have created a totally new category in the comprehensive plan. The Fourth District indicated that in Yusem, the county was acting in a quasi-judicial matter, thus the trial court's decision was reversed because it lacked jurisdiction, and the landowner was allowed to re-file the petition and start anew. The Fourth District concluded that the county's action was essentially quasi-judicial because the increase to the density of Yusem's piece of property would have a limited impact on the public.

The Florida Supreme Court reversed the Fourth District Court of Appeal in part and answered the certified question in the negative, stating that amendments to a comprehensive plan adopted pursuant to Chapter 163 were legislative decisions subject to the "fairly debatable" standard of review. The Florida Supreme Court stated that:

We expressly conclude that amendments to comprehensive land use plans are legislative decisions. This conclusion is not affected by the fact that the amendments to comprehensive plans are being sought as part of a rezoning application in respect to one piece of property. There is no reason to treat a county's decision rejecting a proposed modification of previously adopted land use plan as any less legislative in nature than the decision initially adopting the plan.

Martin County v. Yusem, 690 So. 2d 1288 (Fla. 1997).

6. In the case of Board of County Commissioners of Sarasota County v. Karp, 662 So. 2d 718 (Fla. 2d DCA 1995), the Second District Court of Appeal, in quashing the circuit court's decision, held that a "corridor plan" adopted by Sarasota County for a 5.5-mile parkway extension was a legislative act. The Second DCA found that the corridor plan, which affected 179 acres (including 48 separate parcels), was the formulation of a general policy rather than the application of a previously determined policy. Further, the number of parcels affected was "fairly substantial." Id. at 720.

B. Small Scale Amendments.

In the case of Fleeman v. City of St. Augustine Beach, 728 So. 2d 1178 (Fla. 5th DCA 1998), the Fifth DCA held that an action by a town on an application for a small parcel comprehensive plan amendment was a "legislative function." Similarly, in the case of City of Jacksonville Beach v. Coastal Development of North Florida, Inc., 730 So. 2d 792 (Fla. 1st DCA 1999), the City's denial of a developer's application for small-scale development amendment to the City's comprehensive plan was held by the First DCA to be legislative rather than quasi-judicial in nature. The First DCA went further, certifying the question to the Florida Supreme Court of whether small-scale development amendments were legislative in nature. 730 So. 2d at 795. See also Palm Springs General Hospital, Inc. v. City of Hialeah Gardens, 740 So. 2d 596 (Fla. 3d DCA 1999).

The Florida Supreme Court answered the certified question, holding that small scale development amendments to the comprehensive plan were legislative decisions which are subject to the fairly debatable standard of review. Coastal Development of North Florida, Inc. v. City of Jacksonville Beach, 788 So. 2d 204 (Fla. 2001). The Florida Supreme Court further concluded that the reasoning set forth in Yusem also applied to small scale development amendments, in part because (1) the original adoption of the comprehensive plan was a legislative act, thus it would follow that a proposed modification to the comprehensive plan was likewise a legislative act, and (2) the integrated review process by several levels of government indicated that the action was a policy decision. 788 So. 2d at 208.

Around the same time that the Florida Supreme Court rendered its decision in the Coastal Development case, the Court also ruled in the case of Minnaugh v. County Commission of Broward County, 783 So. 2d 1054 (Fla. 2001). In the Minnaugh ruling, the Florida Supreme Court affirmed the decision of the Fourth District Court of Appeal in Minnaugh v. County Commission of Broward County, Florida, 752 So. 2d 1263 (Fla. 4th DCA 2000), holding that small scale development amendment decisions were legislative in nature and subject to the fairly debatable standard of review. In this case, the petitioners owned a 4.3 acre parcel of land and applied to the Broward County Commission for a small-scale amendment that would change the use of their property from "agricultural" to "employment center." The Broward County Commission denied the petitioners' application for the small-scale amendment, and the petitioners filed a complaint in circuit court for a writ of common law certiorari, a writ of mandamus, and in the alternative, declaratory and injunctive relief. The circuit court dismissed the certiorari and mandamus complaints. On appeal, the Fourth District Court agreed with the circuit court, holding that decisions on small-scale amendments to local comprehensive land use plans were legislative in nature and thus not subject to certiorari review. The Appeals Court reiterated that small-scale amendment decisions were reviewable by a de novo action seeking declaratory or injunctive relief under the fairly debatable standard of review.

A recent case, Island, Inc. v. City of Bradenton Beach, 884 So. 2d 107 (Fla. 2d DCA 2004), concerned the denial by the city commission of a petition to amend the comprehensive plan to permit construction of a duplex on each of two lots. Specifically, the landowners sought amendments to change the designation of their property on the future land use map from preservation, a classification which permits no development, to medium/high residential/tourist. The circuit court

affirmed the city commission's decision, but the District Court of Appeal reversed, holding that the landowners were entitled to a small scale amendment to change the designation of their property. The Second DCA determined that the trial court erred in finding that the city's denial of the petition was fairly debatable. Rather, the evidence before the city commission included expert testimony, including the city's own land planner, showing that the designation of the property as preservation was erroneous because the property did not meet the definition of preservation. In addition, evidence was presented that the county had taxed the property as residential property, and the mayor's son had been issued a license to operate a sailboard rental business on the property, which was not allowed on preservation property.

VI. JUDICIAL VERSUS QUASI-JUDICIAL

As explained by the Second District Court of Appeal in the case of Verizon Wireless Personal Communications, L.P. v. Sanctuary at Wulfert Point Community Association, Inc., 916 So. 2d 850 (Fla. 2d DCA 2005), the term "quasi-judicial" does not imply that a quasi-judicial board possesses judicial power. Rather, "it is simply a characterization of the action itself – one that imposes certain obligations on the [quasi-judicial board] and that allows judicial review by way of certiorari proceedings in circuit court." Id. at 3.

For example, a quasi-judicial board is not empowered to rule on the validity of an existing ordinance. To be sure, a city council or county commission may enact, amend, and repeal ordinances in its legislative function. Id. But, as enunciated by the court in Miami-Dade County v. Omnipoint Holdings, Inc., 863 So. 2d 375, 377 (Fla. 3d DCA 2003), "quasi-judicial boards do not have the power to ignore, invalidate or declare unenforceable the legislated criteria they utilize in making their quasi-judicial determinations."

VII. EXECUTIVE VERSUS QUASI-JUDICIAL

A contract award is the exercise of an executive function, rather than a quasi-judicial act subject to certiorari review. MRO Software, Inc. v. Miami-Dade County, 895 So. 2d 1086 (Fla. 3d DCA 2004). See Charles M. Schayer & Co. v. Board of County Commissioners of Dade County, 188 So. 2d 871 (Fla. 3d DCA 1966) (port authority's act of leasing store space was not judicial or quasi-judicial).

In the case of Fisher Island Holdings, LLC v. Miami-Dade County Commission on Ethics and Public Trust, 748 So. 2d 381 (Fla. 3d DCA 2000); the Third District Court of Appeal held that a decision by the Miami-Dade County Commission on Ethics (which was created by Miami-Dade County to enforce the various county and municipal ethics ordinances) that a complaint was legally insufficient, was a non-reviewable, quasi-executive decision. The Third DCA agreed with the circuit court's reasoning that the Commission's decision was akin to a prosecutor's determination not to file an information or seek an indictment in a criminal action, a decision which has long been held to be completely discretionary and not subject to judicial interference. 748 So. 2d at 382.

VIII. ADDITIONAL QUASI-JUDICIAL CASES OF INTEREST

1. In the case of Buck Lake Alliance, Inc., et al. v. Board of County Commissioners of Leon County, Florida, et al. (Circuit Court Case No. 97-4892), the Circuit Court, Second Judicial Circuit, entered a Final Summary Judgment in favor of Leon County. This action was one of four filed by the Plaintiffs to prevent construction and development activities on a project in Leon County known as Marsh Landing. In this case, the Planning Commission found that the project complied with the Comprehensive Plan and Leon County Ordinances regarding stormwater impacts, water quality, protection of the environment, etc. The County Commission also subsequently approved of the project's preliminary site / development plan. The Circuit Court found as follows:

Thus, it appearing that all of the issues raised in the Complaint are either barred by the application of collateral estoppel or not properly justiciable or triable in this action based upon the county's approval of a preliminary site plan, it appears that the material facts are not in dispute and the Defendants are entitled to judgment as a matter of law.

Circuit Court Case No. 97-4892 at 11. However, upon appeal, the First District Court of Appeal reversed the decision of the Circuit Court. Buck Lake Alliance, Inc. v. Board of County Commissioners of Leon County, 765 So. 2d 124 (Fla. 1st DCA 2000). The First District Court found that a development order's compliance with the comprehensive plan was to be determined by references to the "objectives, policies, land uses, and densities and intensities in the comprehensive plan," rather than by references to ordinances that were adopted to implement the plan. 765 So. 2d at 127. Thus, the District Court determined that the Planning Commission and Leon County Commission never ruled on the claims regarding inconsistencies between the development order and the comprehensive plan. Id.

2. In the case of Miami-Dade County v. Walberg, 739 So. 2d 115 (Fla. 3d DCA 1999), rev. dismissed, 763 So. 2d 1046 (Fla. 2000), the Third DCA held that landowners were not entitled to a rezoning of their property. The Third DCA noted that even if the rezoning was consistent with the comprehensive plan, the landowner was not presumptively entitled to the use; further, the property owner was not entitled to the use by proving consistency alone if the board action was also consistent with the comprehensive zoning plan. Based on the testimony of neighbors and an expert, plus review of a site map, the Dade County Board of County Commissioners denied the application for rezoning because the change was incompatible with the neighborhood and would conflict with the principles and intent of the plan for development in Dade County. The Third DCA determined that the Board's decision was thus based upon competent substantial evidence.

3. Pinecrest Lakes, Inc. v. Shidel, 795 So. 2d 191 (Fla. 4th DCA 2001), rev. den. 821 So. 2d 300 (Fla. 2002), is a particularly interesting case, as it raised an issue that had been unprecedented in the State of Florida: does a trial court have the authority to order the complete demolition and removal of buildings because of inconsistency with the comprehensive plan? The Fourth District of Appeal concluded that the court was so empowered, and in affirming the decision of the circuit court,

found that the complete demolition and removal of apartment buildings in Martin County was an appropriate remedy.

The background of the Pinecrest Lakes case actually goes back some twenty years, when a developer set out to develop a 500-acre parcel of land in Martin County in ten phases. Phases One through Nine were developed as single-family homes on individual lots in very low densities. Phase Ten, the subject of the litigation, involved a 21-acre strip of land abutting a major arterial highway that was designated by the Comprehensive Plan as "medium density residential" with a maximum of eight units per acre. Over a seven year period of time the developer sought the approval of three different site plans for Phase Ten. The County Commission finally approved the last site plan and issued a development order allowing the development of 136 two-story apartment units on the site. Neighboring residents and homeowners associations sued, and when the circuit court found that the development order was consistent with the Comprehensive Plan, the petitioners appealed. Meanwhile, the developer kept building more apartments.

Upon appeal, the Fourth District Court of Appeal in the case styled Poulos v. Martin County, 700 So. 2d 163 (Fla. 4th DCA 1997), concluded that Fla. Stat. § 163.3215, required de novo consideration in the trial court on the consistency issue, and remanded the case to the circuit court to determine whether the Phase Ten development was consistent with the Comprehensive Plan. On remand the circuit court found that the apartment buildings in Phase Ten were not compatible or comparable to the types of single family, single level dwelling units of Phase One, nor were they of comparable density. Consequently, the circuit court determined that the development order for Phase Ten was inconsistent with the comprehensive plan. The court then settled on a remedy, which was an injunction to permanently enjoin further development of the project, plus the removal of the existing apartment buildings. The Fourth District Court of Appeal affirmed the decision and stated as follows:

The statutory rule is that if you build it, and in court it later proves inconsistent, it will have to come down. The court's injunction enforces the statutory scheme as written. The County has been ordered to comply with its own Comprehensive Plan and restrained from allowing inconsistent development; and the developer has been found to have built an inconsistent land use and has been ordered to remove it. The rule of law has prevailed.

795 So. 2d at 209.

The Fourth District Court of Appeal held as follows: (1) the county's interpretation of its own comprehensive plan was not entitled to judicial deference; (2) the absence of a "transition zone" between existing single-family residences and the multi-family apartment complexes was inconsistent with comprehensive plan; and (3) the complete demolition and removal of the development was an appropriate remedy, where the development was inconsistent with the comprehensive plan. 795 So. 2d 191 (Fla. 4th DCA 2001). The Florida Supreme Court declined to

review the decision, 821 So. 2d 300 (Fla. 2002), and the \$3.3 million complex was completely demolished in September 2002.

4. In the case of Evergreen the Tree Treasurers of Charlotte County, Inc. v. Charlotte County Board of County Commissioners, 810 So. 2d 526 (Fla. 2d DCA 2002), the Second DCA denied the petition for writ of certiorari, as the issues raised by the petitioners were moot. However, the petition was nevertheless reviewed by the District Court because of due process errors on the part of the circuit court. This case involved a challenge by a citizens group of the Development Review Committee's (DRC) approval of an apartment development project. On appeal, the Second DCA found that the circuit court exceeded its scope of certiorari review and applied the incorrect law.

First, the Second DCA determined that the circuit court applied the incorrect scope of review by considering sworn and unsworn testimony at the evidentiary hearing and making factual findings. In its appellate capacity the circuit court's certiorari review should be limited to the administrative record and the items attached to the petition. Second, the circuit court applied incorrect law in its due process analysis. Rather than concluding that due process requirements had been satisfied based on public participation at the hearing on the development proposal, the court should have determined whether the specific quasi-judicial decision under review was derived from a proceeding which itself afforded procedural due process. Third, the Second DCA determined that the circuit court applied the incorrect rule of law when it decided that the DRC meeting was not a proceeding subject to Florida's Sunshine Law. Rather, the Second DCA concluded that the county's staff members serving on the DRC were delegated by ordinance to serve as public officials, thus, any DRC meeting at which quasi-judicial action was taken was subject to the Sunshine Law. See also Lyon v. Lake County, 765 So. 2d 785 (Fla. 5th DCA 2000), rev. den. 790 So. 2d 1105 (Fla. 2001) (meetings of Technical Review Committee created by county ordinance are subject to the provisions of the sunshine law, but informal, informational meetings of Pre-technical Review Committee are not).

5. The case of Seminole Entertainment, Inc. v. City of Casselberry, 811 So. 2d 693 (Fla. 5th DCA 2001), involved a municipal hearing by the City of Casselberry in which the business license of an adult entertainment establishment was revoked. In reversing the circuit court's decision, the Fifth District Court of Appeal found that the license revocation hearing by the City (which was a quasi-judicial hearing) violated the due process rights of the adult entertainment establishment. Namely, the Fifth DCA determined that the establishment was denied the right to challenge the principal witness against it through cross-examination, plus the evidentiary rulings of the mayor presiding over the hearing reflected a bias so pervasive that it violated basic fairness. Quoting McQuillin's Municipal Corporations, the Fifth DCA stated as follows:

A hearing or trial in an administrative proceeding to revoke a license or permit must be fair. While the tribunal may not be a court or the proceeding strictly judicial, there must be an orderly and fair procedure. Technical legal rules of evidence and procedure may be disregarded, but no essential element of a fair trial can be dispensed with unless waived. The licensee must be fully apprised of the claims against him or her and of the evidence to be considered, and must be

given the opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. The presiding official should be judicial in attitude and demeanor and free from prejudgment and from zeal for or against the licensee or permittee... (footnotes omitted).

811 So. 2d at 696, citing 9 McQuillin, Municipal Corporations, § 26.89 (3rd ed.).

6. In the case of Barber v. Leon County, 838 So. 2d 1148 (Fla. 1st DCA 2003), the First District Court of Appeal affirmed the trial court's decision, therein approving the siting of a solid waste transfer facility in Leon County. By way of background, the lawsuit was filed on October 12, 2000, and was amended several times as a result of dismissals, until the final Sixth Amended Petition was filed by the Complainants. Count I was a procedural due process claim, while Count II was premised on Fla. Stat. § 163.3215, challenging the site plan approval of the solid waste transfer facility site as violative and contrary to the Tallahassee-Leon County Comprehensive Plan. Following a two-day trial held on January 23-24, 2002, the trial court dismissed both Counts I and II of the Sixth Amended Petition for lack of subject matter jurisdiction. The trial court concluded that it lacked jurisdiction on both Counts I and II, based on procedural deficiencies. In addition, after reaching its decision that the Petition should be dismissed for lack of jurisdiction, the trial court also made several critical findings of fact, the most important of which concluded that the proposed solid waste transfer facility was consistent with the Tallahassee-Leon County 2010 Comprehensive Plan.

7. In Florida Water Services Corp. v. Robinson, 856 So. 2d 1035 (Fla. 5th DCA 2003), a public water utility filed an action against the Hernando County Board of County Commissioners, seeking a writ of prohibition to recuse the entire Board for bias and conflict of interest, after the Board denied the utility's applications for permits to drill three new wells. The circuit court denied the petition and dismissed the complaint, and the District Court of Appeal affirmed this decision, holding that the utility's remedy was not a writ of prohibition. Rather, the utility's remedy for redress of its claim that the Board was biased and motivated by self-interest in denying its application, was a writ of certiorari to review the Board's decision in light of the utility's due process claims.

8. In the case of Snyder v. City Council of the City of Palmetto, 902 So. 2d 910 (Fla. 2d DCA 2005), property owners filed a petition for writ of certiorari to seek review of the city council's decision to not adopt an ordinance which would increase the density limit of their property. The sole issue before the circuit court was the city council's refusal to enact the ordinance. The circuit court determined that the city council had not departed from the essential requirements of law and that there was competent, substantial evidence to support the action. The Second District Court of Appeal's subsequent review of the record indicated that the circuit court applied the proper certiorari standard and afforded the petitioners due process, and thus the certiorari petition was denied.

9. In the case of Morningside Civic Association, Inc. v. City of Miami Commission, 917 So. 2d 293 (Fla. 3d DCA 2005), the Third District Court of Appeal concluded that the circuit court relied on the wrong version of the city's ordinance in denying petitioner's certiorari petition, and thus

departed from the essential requirements of law. In this case, a civic association sought to quash a resolution by the city that granted a major use special permit to a developer. The background is as follows. When the developer filed its initial application for the permit, the Planning Advisory Board recommended that the application be denied, and the developer decided to modify its proposal. During this time, the City amended its zoning ordinance, which required the City Commission to make written findings with regard to seven different design criteria. The developer then submitted a revised application, and the City Commission approved the project without making any written findings. The civic association petitioned for certiorari in the circuit court, but the circuit court denied the petition, relying on the language of the old ordinance (which did not require written findings). Upon petitioning the Third District Court of Appeal, the Third District quashed the ruling of the circuit court, holding that the circuit court's reliance on the old version of the city's ordinance was an incorrect application of law.

10. In another recent case, Concerned Citizens of Bayshore Community, Inc. v. Lee County ex rel. Lee County Board of County Commissioners, 923 So. 2d 521 (Fla. 2d DCA 2005), a citizen's group and individual citizens petitioned the circuit court for certiorari review to overturn the County's approval of a company's (U.S. Home) rezoning application. The County was the only named respondent. U.S. Home filed a notice of appearance and moved to dismiss the petition, contending that it was an indispensable party. The citizen's group moved to amend the petition to add U.S. Home as a respondent, but the circuit court denied the motion and dismissed the petition with prejudice. The citizen's group then sought second-tier certiorari review. In granting the petition and quashing the circuit court's order, the Second District Court of Appeal found the circuit court made two errors. First, the circuit court applied the incorrect law, as a property owner affected by a change in a zoning regulation change is not an indispensable party to a review of the administrative action. Second, Fla. R. App. P. 9.100(f) did not apply, rather the proceeding was governed by Fla. R. Civ. P. 1.630, which states that the caption shall show the action filed in the name of the plaintiff. Thus, the fact that the petition did not name U.S. Home as a defendant in the action did not subject the petition to dismissal.

11. Auerbach v. City of Miami, 929 So. 2d 693 (Fla. 3d DCA 2006). In this case, an aggrieved neighbor sought second-tier certiorari review of a circuit court's affirmance of the action of the City Commission in granting a developer a major use special permit, as well as a zoning variance, for the construction of a residential project. First, the District Court found no basis to interfere with the major use special permit granted by the City Commission and approved by the circuit court. However, the District Court did find that the variance was totally unsupported by the "legal hardship" requirements of the City's ordinance, and that the circuit court failed to apply the correct law.

12. Premier Developers III Associates v. City of Fort Lauderdale, 920 So. 2d 852 (Fla. 4th DCA 2006). This case involved a site plan to build a twelve-story condominium residential building along the intracoastal waterway. City staff determined that the project's decreased setbacks did not meet the neighborhood compatibility requirements, and the Planning and Zoning Commission subsequently rejected the project on those grounds. The City Commission likewise denied the site plan. The developer then filed a petition for certiorari in the Circuit Court, and after a hearing and

consideration of the voluminous record and briefs of the parties, the Circuit Court denied the petition, finding that the City Commission had competent, substantial evidence to deny the developer's request for a site plan. Upon second tier certiorari review, the District Court of Appeal likewise denied the developer's petition for certiorari, finding that the Circuit Court afforded procedural due process and applied the correct law. One particular issue that the developer contended was that the Circuit Court did not properly allocate the burden of proof. However, the District Court noted that the Circuit Court had determined from a review of the entire record that the development had not met its burden of complying with all the criteria for setbacks. The burden never shifted, as there was competent substantial evidence to show that several criteria were not complied with. Id. at 854.

13. BMS Enterprises LLC v. City of Fort Lauderdale, 929 So. 2d 9 (Fla. 4th DCA 2006). In this case, the zoning administrator interpreted the City's Land Development Regulations (LDRs) to allow self-storage facilities as a permitted use on land located within 60 feet of a railroad right-of-way. A neighboring citizen appealed this decision to the Board of Adjustment (BOA), the entity empowered by the City's LDRs to overrule a decision of the zoning administrator. The BOA affirmed the decision allowing the proposed development. The citizen then petitioned the circuit court for certiorari review of the BOA decision, and pending that, also appealed the same issue to the City Commission. The City Commission voted to overturn the BOA's decision. Upon certiorari review the Circuit Court subsequently granted the neighbor's petition and denied the developer's petition for writ of certiorari. However, upon second tier certiorari review, the Fourth District Court of Appeal quashed the orders of the Circuit Court, and held that the City's LDRs allowed the self-storage facilities as a permitted use on the property, and further, that the City Commission did not have the authority under its LDRs to reverse the BOA's interpretation of the LDRs in this instance. Therefore, the District Court found that the "circuit court departed from the essential requirements of law in its limited review capacity, causing a substantial miscarriage of justice." Id. at 11.

14. Atlantic Shores Resort, LLC v. 507 South Street Corporation, 937 So. 2d 1239 (Fla. 3d DCA 2006). This matter concerned the redevelopment of hotel property located in the historic district of the City of Key West, where the developer was required to first obtain a certificate of appropriateness from the Historic Architectural Review Commission (HARC). HARC found in favor of the developer and issued a certificate of appropriateness. Pursuant to the City's Code of Ordinances, decisions of the HARC are considered final and may be appealed to a special master. Decisions of the special master may then be appealed to the Circuit Court. An objector to the hotel redevelopment project appealed to the special master, arguing that the plan violated certain height/story guidelines, but was unsuccessful. Instead of appealing the special master's decision to the Circuit Court, the developer waited until the hotel redevelopment plan was submitted to the City Commission. The City Commission passed a resolution approving the development plan, and the objector then filed a petition for writ of certiorari with the Circuit Court. The developer claimed that the objector's arguments were barred by res judicata and/or collateral estoppel; however, the Circuit Court found that the issues before it were not precluded by res judicata or collateral estoppel, and that the redevelopment plan violated the height/story limitation. The District Court quashed the writ, holding that the objector's claims were barred by collateral estoppel and that HARC's determination that the building did not violate height/story restrictions was a reasonable interpretation, within the

range of permissible interpretations of the height/story limitation, and thus should not have been overturned by the Circuit Court.

15. Pharmcore, Inc. v. City of Hallandale Beach, 946 So. 2d 550 (Fla. 4th DCA 2006). This case began as a code enforcement matter, where Pharmcore was found to be in violation of various ordinances for failing to repair sidewalks and conform to landscaping and parking requirements. Subsequently Pharmcore received notice from the City that its pole sign was nonconforming. The parties ultimately reached a settlement agreement wherein Pharmcore agreed to make repairs and the City agreed to permit the nonconforming sign. The settlement agreement was signed by the assistant city attorney. However, City staff then denied Pharmcore's application for a sign permit, stating that the application was untimely. Pharmcore appealed to the City Commission, and at the hearing, City staff expressed additional reasons for denying the sign permit, to which Pharmcore objected based upon lack of notice. Pharmcore also objected to the procedures used at the hearing. The city attorney further claimed that the settlement agreement was unauthorized, as the City had not ratified it. Therefore, the City Commission voted to deny the sign permit. Pharmcore sought certiorari review in the circuit court, claiming that the City had violated its procedural due process rights. The Circuit Court reviewed the record and found that Pharmcore was afforded due process. The District Court likewise denied Pharmcore's subsequent petition, finding that "Pharmcore has presented nothing to suggest that the circuit court applied the incorrect law regarding procedural due process, other than to say that the judge reached the wrong result." *Id.* at 552.

IX. QUASI-JUDICIAL POLICIES & PROCEDURES

There are some broader, practical questions which need to be addressed by the local government attorney in preparing policies and procedures for its council/commission to conduct quasi-judicial hearings. Issues such as notices, citizen participation, evidence, findings, and the record are addressed below. Ex parte communications will be addressed in the section that follows (Section X).

A. Notices.

How are notices to the applicant, surrounding landowners, "affected parties," and others to be provided or published? What would the content of those notices be concerning the recipient's ability to participate? Should those notices also provide a warning with regard to ex parte communication?

Miami-Dade County, which in its own Special Laws determined that quasi-judicial procedures apply, has addressed the notice issue in Sec. 33-310 of its Code of Laws, in part as follows:

- (c) No action on any application shall be taken by the Community Zoning Appeals Board or the Board of County Commissioners on any appeal, until a public hearing has been held upon notice of the time, place, and purpose of such hearing, the cost of said notice to be borne by the applicant. Notice shall be provided as follows:

(1) Said notice shall be published twice in newspapers of general circulation in Miami-Dade County as follows: (A) a full legal notice, to be published no later than twenty (20) days and no earlier than thirty (30) days prior to the public hearing, to contain the date, time and place of the hearing, the property's location (and street address, if available) and legal description, and nature of the application, including all specific variances and other requests; and (B) a layman's notice, to be published in the newspaper of largest circulation in Miami-Dade County, no later than twenty-five (25) days and no earlier than thirty five (35) days prior to the public hearing, to contain the same information as the above described full legal notice except that the property's legal description may be omitted and the nature of the application and requests contained therein may be summarized in a more concise, abbreviated fashion. The layman's notice may be published in a section or a supplement of the newspaper distributed only in the locality where the property subject to the application lies. In the event that any time periods specified in this subsection shall conflict with any applicable provision of the Florida Statutes, the provision of the Florida Statute shall govern.

(2) Mailed notice containing general information, including, but not limited to, the date, time and place of the hearing, the property's location (and street address, if available), and nature of the application shall be sent as provided by Subsection 33-310(d) no later than thirty (30) days prior to the hearing.

(3) The property shall be posted no later than twenty (20) days prior to the hearing in a manner conspicuous to the public, by a sign or signs containing information including but not limited to the applied for zoning action and the time and place of the public hearing.

* * * *

(e) The person or persons responsible for providing the notices provided in subsection (c) above shall attach to the application file a sworn affidavit or affidavits setting forth that they have complied with said subsection. Failure to provide the newspaper notices as provided, or failure to mail the written notices as provided, or failure to post the property as provide renders voidable any hearing held on the application.

(f) The Director shall have the discretion to expand any of the notice provisions contained in this section to provide more information if deemed appropriate.

B. Standing / Citizen Participation.

Questions to be addressed include: (1) who would have standing to appear before the Board/Council/Commission at the time of the hearing, and (2) who would have standing subsequent to a decision to "appeal" the matter?

For example, in Section 14.00.06(H) of the Lake County Land Development Regulations, the following definition of standing applies:

Standing. No person shall participate in the case as a party unless that person can demonstrate that they will suffer an adverse effect to an interest that exceeds in degree the adverse effect to the interest of the public in general. All persons who received a notice of hearing or filed a notice of appearance shall be presumed to have standing unless challenged by another party. Decisions regarding standing shall be made by the chairman, subject to review by the board upon motion and second being made.

Lake County has observed the following procedures regarding citizen participation at hearings:

Notice of Appearance.

- a. Anyone other than the applicant and the staff who wishes to participate as a party in the case or cross examine other witnesses, must file a notice of appearance no later than five (5) days prior to the hearing. The notice of appearance should include the name and address of the person seeking to appear. A notice of appearance shall give a person the right to appear either in person as a party to the case or to be represented by an agent at the hearing.
- b. Those filing a notice of appearance shall be considered parties to the hearing, subject to a determination of standing if challenged.
- c. The chairman of the board may allow participation in the hearing by persons filing a notice of appearance after the five (5)-day deadline, upon a showing of excusable neglect by that person, but if a late appearance is permitted, the applicant shall have the right to continue the case, at their option, without additional cost. Persons who do not demonstrate excusable neglect are not entitled to seek any delay in the proceedings.

Lake County Land Development Regulations, Sec. 14.00.06(C)(2).

C. Staff Reports.

Input from staff and how it is to be obtained must also be considered. Should a staff report be prepared in written form in a narrative or in the nature of a pretrial statement? Should only oral presentations at the hearing be permitted by staff? If a staff report is prepared, how far in advance must it be submitted and copies be provided to the applicant? Should the applicant be permitted to provide something in the nature of a response on rebuttal brief? Here is an example:

Staff report. The staff report shall be available to the general public at least five (5) days prior to the hearing on the case. If the staff report cannot be completed within the five (5) days due to failure on the part of the applicant to supply requested information, staff shall have the right to postpone the hearing on the case. Otherwise, failure to complete the staff report within five (5) days shall give the applicant the option of either postponing the hearing or continuing with the scheduled hearing date. However, in the event the applicant chooses to continue to the hearing without the staff report, staff shall have the option of recommending denial.

Lake County Land Development Regulations, Sec. 14.00.06(C)(1).

D. Obtaining Additional Information.

May board or commission members obtain information on their own? Pursuant to Fla. Stat. § 286.0115(c)3., if adopted by an ordinance or resolution, a local public official may conduct investigations and site visits, and may receive expert opinions on a pending quasi-judicial matter if same is made a part of the record. For example, Lake County and Broward County allow board or commission members to conduct site visits and investigations and to receive expert opinions, provided same is disclosed and made a part of the record. Lake County Land Development Regulations, Sec 14.00.06(E) and 14.00.07(C)(3); Broward County Code of Laws, Sec. 1-327(c)(3).

What about the personal knowledge a board or commission member may have with regard to the site? Wakulla County has addressed that as follows:

Personal knowledge. Board and commission members may use their own personal knowledge in deciding a specific case before the board or commission. However, such personal knowledge should be recited in and made part of the record in a timely manner which provides an opportunity for refutation by interested parties.

Wakulla County Code of Laws, Sec. 24.001(d)(2).

E. Conduct of Hearing.

Walton County utilizes the following basic procedures in conducting a quasi-judicial hearing:

1. The applicant shall present evidence in support of the particular application under review. The County shall thereafter present evidence relating to the application under review.
2. The applicant's evidence may be presented by an attorney or by any other representative chosen and retained by the applicant. The County's evidence shall be presented by an attorney representing the County or by a member of the administrative staff of the County.
3. The applicant and the County may each call witnesses, who shall be sworn. All testimony shall be under oath and recorded.
4. Fundamental due process shall be observed and shall govern the proceedings.
5. Both parties may cross examine witnesses and present rebuttal evidence.
6. The Board and its attorney may call and may question any witness(es).
7. The Board may, at any hearing, order the reappearance of any witness at a future (or continued) hearing as to the particular case.
8. After all evidence has been submitted, the chair shall close presentation of evidence in the particular matter.

Walton County Land Development Code, Sec. 10.02.03(E).

With regard to the cross examination of witnesses or participants in the hearing, Broward County utilizes the following procedures:

- (a) Only the applicant, staff and the board shall be entitled to conduct cross-examination when sworn testimony is given or documents are made a part of the record. Only the board shall be entitled to conduct cross-examination of participants providing unsworn testimony. The board shall not assign unsworn testimony the same weight or credibility as sworn testimony in its deliberations.
- (b) The applicant, staff and all witnesses providing sworn testimony are subject to cross-examination during the hearing.
- (c) Participants, who choose not to be sworn as witnesses, shall not be subject to cross-examination, except from the board as stated in subsection (a) above.

- (d) A participant or a witness may not question any person. However, a participant or a witness may request that the board ask questions of a witness. The board may or may not choose to ask the witness any questions requested by a participant.
- (e) The scope of the cross-examination shall be limited to the facts alleged by the applicant, staff or witnesses in relation to the application.
- (f) The chair of the board may direct the party conducting the cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined.
- (g) The chair of the board may direct the party conducting the cross-examination to stop a particular line of questioning that is not relevant and that is beyond the scope of the facts alleged by the individual being cross-examined.
- (h) If the party conducting the cross-examination continuously violates directions from the chair to end a line of questioning deemed irrelevant and merely designed to harass, intimidate or embarrass the individual, the chair may terminate the cross-examination.

Broward County Code of Laws, Sec. 1-331.

Denying a petitioner the right to challenge a principal witness against it through cross examination would be a denial of due process. See Seminole Entertainment, Inc. v. City of Casselberry, 811 So. 2d 693 (Fla. 5th DCA 2001).

It is also necessary for a petitioner to file a proper objection before a quasi-judicial board. In the case of Clear Channel Communications, Inc. v. City of North Bay Village, 911 So. 2d 188 (Fla. 3d DCA 2005), the District Court of Appeal agreed with the circuit court's opinion, holding that the petitioners failed to preserve their legal challenges for appellate review by not filing proper objections before the city commission during a quasi-judicial hearing. The petitioners contended that just questioning a witness during a quasi-judicial hearing was sufficient to preserve an issue for appellate review, but the courts disagreed, finding that a sufficiently specific objection would be required. Id. at 189, 190.

F. Evidence.

Certain legal or technical arguments, or objections, may be lodged regarding admissibility of "evidence" at these hearings. Consideration should be given as to whether or not a basic training course in the Rules of Civil Procedure, and the conduct of hearings, should be presented in seminar fashion to the Board of County Commissioners or City Commissioners and their staff. How would rulings on evidence submission be determined? By a majority vote of those present and voting, or by the designated chair of that particular meeting? If it is delegated to the chair, are the chair's rulings

final, or subject to an appeal to the remaining Board members? May procedures such as voir dire be permitted of witnesses?

Broward County has addressed the issue of evidence as follows:

Evidence.

- (a) The board shall not be bound by the strict rules of evidence, or limited to consideration of evidence which would be admissible in a court of law.
- (b) The board may exclude evidence or testimony which is not relevant, material, or competent, or testimony which is unduly repetitious or defamatory.
- (c) The board will determine the relevancy of evidence.
- (d) Matters relating to an application's consistency with the Broward County Land Use Plan, a Certified Land Use Plan or the Broward County Land Development Code will be presumed to be relevant and material.
- (e) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient by itself to support a finding unless it would be admissible over objection in a court.
- (f) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, the applicant and staff shall be given an opportunity to compare the copy with the original.
- (g) The office of the county attorney shall represent the board and advise the board as to the procedures to be followed and the propriety and admissibility of evidence presented at the proceeding.

Broward County Code, Sec. 1-330.

G. The Record.

Broward County defines the "record" as follows:

Quasi-judicial proceedings shall be preserved by tape recording or other device. The official record of the proceeding shall be the minutes as approved by the board and the evidence received, unless a verbatim transcript is made. If the proceeding is transcribed, the transcript shall become the official record of the proceeding. Any person may request that all or part of the transcript of the proceeding be transcribed into verbatim form. In such case, the person

requesting the transcript shall be responsible for the cost of production of the transcript.

Broward County Code of Laws, Sec. 1-335.1(a).

Treating a rezoning as a quasi-judicial proceeding before a local government legislative body may involve a re-examination of all of the local procedures to assure a complete "record" is kept (since the court would not permit additional documents, witnesses, or independent experts to testify on behalf of the local government at any subsequent "trial"). Instead, the trial court will only review the record made before the local legislative body. This may mean that local governments will need to make sure that they have on staff, or retain, expert witnesses (such as planners or engineers) to make this record before the Board or Commission in favor of the staff's position.

In a recent case, Dragomirecky v. Town of Ponce Inlet, Board of Adjustments, 917 So. 2d 410 (Fla. 5th DCA 2006), a property owner filed a *pro se* petition with the circuit court, seeking certiorari review of a demolition order. The circuit court subsequently ordered the petitioner to file an appendix with transcripts and copies of exhibits. After obtaining counsel, the petitioner moved for two extensions of time to comply, and after granting the second request, the court warned the petitioner that failure to comply with the order would subject the petition to dismissal. Before the deadline, a corrected appendix and a corrected record were filed, but were found to be confusing and conflicting. On a motion to dismiss by the Town, the circuit court subsequently dismissed the petition, saying that the record was "incomplete, confusing and contradictory." On petition to the Fifth District Court of Appeal, the Fifth DCA held that dismissal was too severe a sanction for failure to comply with appellate procedure rules. The court commented as follows:

It is often very difficult to prepare a proper record in an appellate proceeding such as this. Municipal boards are not set up well for creating and organizing a record for appellate review ... It is not uncommon to see confusion and contradiction, but based on our review, it does not appear that the record was so "incomplete, confusing and contradictory" that the appeal could not proceed. It is the petitioner who has the right to select the issues for review and who has the burden of providing a record adequate to demonstrate error. If petitioner's record is incomplete, he will not be able to demonstrate error and he will fail on the merits.

917 So. 2d at 412.

H. Final Order.

Should a motion be made at the time of the conclusion of the final hearing by any of the Board or Commission members to give finality to the hearing, or should there be only a preliminary motion to provide guidance to staff (county or city attorney or the planning director) to draft an appropriate final order? Should draft final orders be prepared during the course of the hearing, or

should the draft be presented at some future date? Should both parties be permitted to submit proposed final orders from which the Board or Commission may choose all or a portion?

Final orders should be approved by a majority vote of the Board, and contain specific findings of fact and conclusions of law indicating the factual and legal basis for the motion which should then be made a part of the record as well. However, should "dissenting" or "concurring" opinions be included by Board or Commission members who vote in the minority?

Walton County utilizes the following in rendering a final order:

Findings and Order. Unless the parties and the applicable Board agree to an extension the applicable Board shall, within 15 working days of the hearing, or within 15 working days of receipt of a transcript of the hearing if one is requested by the applicable Board, whichever is longer, prepare a written order which shall include:

1. A statement identifying the applicable criteria and standards against which the proposal or request was tested;
2. Findings of fact, based on evidence of record, which ultimately establish compliance or noncompliance with the applicable criteria and standards of this Code, directly or by reasonable inference;
3. The Board's conclusion (supported by its findings of fact and the applicable law, rules and regulations) to either approve, conditionally approve, or deny the proposal or request.

Issuance of the findings of fact and order shall be by motion approved by a majority of those members of the reviewing Board present and voting. A copy of the Board's order shall be mailed to the applicant(s) by certified mail, return receipt requested, within three working days of rendition of the written order.

Walton County Land Development Code, Sec. 10.02.03(F).

In June of 2001, the Florida Supreme Court released its decision in the case of Broward County v. G.B.V. International, Ltd., 787 So. 2d 838 (Fla. 2001), regarding the standard of review and process of appealing a local government's land use decision. By way of background, G.B.V. sought the Broward County Commission's approval of a plat to build garden-style apartments at a density of ten units per acre. The County's staff recommended approval of the plat, and the County Commission approved the plat application, but at a density of six units per acre rather than the requested ten units per acre. A series of appeals ultimately led to the Florida Supreme Court, which held as follows: (1) that the County Commission's decision was quasi-judicial; (2) that the Circuit Court improperly engaged in an independent review of the plat application and improperly made its own factual finding; and (3) that the District Court of Appeal improperly evaluated the merits of the

County Commission's decision and improperly ordered the Commission to approve the plat at ten units per acre. The Florida Supreme Court thus remanded the case to the Circuit Court to review the record to determine whether the County Commission's decision regarding the plat application was supported by competent substantial evidence.

Perhaps the more interesting aspect of the G.B.V. case involved the question of whether the Florida Supreme Court should implement a rule requiring a local government to prepare a written final decision when acting in its quasi-judicial capacity in a zoning hearing. In its opinion, the Florida Supreme Court noted that the County Commission had done little to facilitate judicial review, nor had it bolstered its own decision, as the Commission had made no findings, stated no formal reason for its decision, and issued no written order. Although the Court stated that such written findings of fact were not presently required, the Court did refer the issue for study to the Rules of Judicial Administration Committee of the Florida Bar. The Judicial Administration Rules Subcommittee recommended against a new rule to require written decisions.

I. Maintaining Files.

All files and materials submitted at the hearing should be maintained as if it were a court file for purposes of establishing a potential appellate record. Who should be the custodian of these records? The City Clerk or Clerk of Circuit Court (where the subject appeal would subsequently be lodged), the Planning staff, or some other entity? Whatever is decided, it might be wise to keep a copy with the "official record keeper" of the county or city, whoever that may be. May members of the public examine the file during the pendency of the matter? May members of the Board or Commission examine the file during the pendency of the matter; and if so, how would this be disclosed to the applicant or staff?

Lake County provides the following:

Files to be maintained. All evidence admitted at the hearing, and a copy of the document setting forth the decision of the board shall be maintained in a separate file constituting the record of the case. Upon approval thereof by the board, the minutes of that portion of the meeting concerning the case shall be placed in the record. The record shall be kept in the custody of the clerk of the board at all times during the pendency of the case, and where there are multiple hearings on a single case, custody of the record should not be given to any board member, party or member of the public, until the case is fully concluded, except that any member of the public may examine the file in the office of the clerk of the board at all reasonable times.

Lake County Land Development Regulations, Sec. 14.00.06(I).

X. EX PARTE COMMUNICATION

Quasi-judicial proceedings do not require the same quality of due process as would a true court proceeding, though certain minimum standards of due process are required. A quasi-judicial hearing will meet the basic due process requirements if the parties are provided notice of the hearing, provided an opportunity to be heard, allowed to present evidence, allowed to cross-examine witnesses, and are *informed of all of the facts upon which the commission acts*. Jennings v. Dade County, 589 So.2d 1337, 1340 (Fla. 3d DCA 1991). Thus, to meet the minimum requirements of due process under the Federal and Florida Constitutions, all parties must be aware of, and able to rebut, all facts upon which a commission bases its decision.

Ex parte communication, which is by definition one party providing off-the-record information to a decision maker, is inherently dangerous to the legitimacy of quasi-judicial proceedings. In the case of Jennings v. Dade County, 589 So. 2d 1337, 1341 (Fla. 3d DCA 1991), the Third DCA stated, "Ex parte communications are inherently improper and are anathema to quasi-judicial proceedings. Quasi-judicial officers should avoid all such contacts where they are identifiable." Courts have ruled that *any* ex parte communications are presumed to be prejudicial to the proceedings until the local government proves otherwise. Upon the determination that ex parte contacts took place, the court will require the parties that engaged in the communications to present evidence to prove that the communications were not prejudicial. The court, in Jennings, justifies this onerous burden by noting that the knowledge and the evidence of the contact's impact are in the hands of a decision making body, and that a party challenging the contact should not have to extricate such evidence from the offending parties in order to maintain his or her constitutional rights. Id. Disclosure of ex parte contacts on the record does enable the parties to be aware of all of the facts and to rebut those facts. Such disclosure is still questionable, however, because the party may not have an opportunity to cross examine those parties that provided the evidence to the commission.

A. Fla. Stat. § 286.0115.

The case of Jennings v. Dade County, 589 So. 2d 1337 (Fla. 3d DCA 1991), rev. den. 598 So. 2d 75 (Fla. 1992), may prohibit, or at least limit, in quasi-judicial proceedings, any contact with the decision-makers prior to the rezoning hearing on the site plan review taking place. This would seem to include, but not be limited to, interested citizens, homeowner's association representatives, environmental groups, business groups, the applicant, the applicant's consultants, and perhaps even the Board/Commission's own planning and engineering staffs.

This decision was felt by some local government officials to be an impediment to constituents' access to these elected officials. In 1995 the Florida Legislature enacted Fla. Stat. § 286.0115, in an effort to allow local governments to override the Jennings and Snyder decisions.

Fla. Stat. § 286.0115, in part provides:

286.0115 Access to local public officials.—

(1)(a) A county or municipality may adopt an ordinance or resolution removing the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials pursuant to this section or by adopting an alternative process for such disclosure. However, this section does not require a county or municipality to adopt any ordinance or resolution establishing a disclosure process.

(b) As used in this section, the term "local public official" means any elected or appointed public official holding a county or municipal office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(c) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member. If adopted by county or municipal ordinance or resolution, adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with local public officials.

1. The substance of any ex parte communication with a local public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action 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 a part of the record before final action on the matter.

2. A local public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

3. Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

4. Disclosure made pursuant to subparagraphs 1., 2., and 3. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This section

does not subject local public officials to part III of chapter 112 for not complying with this subsection.

* * * *

(3) This section does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

There is one court opinion relating to this statute. In the case of City of Hollywood v. Hakanson, 866 So. 2d 106 (Fla. 4th DCA 2004), the District Court of Appeal reversed the decision by the circuit court (which was in favor of a former city employee) and held that comments made regarding the former employee at a public meeting did not constitute ex parte communications. The alleged ex parte communication involved statements made during a public meeting of the city commission, which was attended by both Hakanson, a former risk manager for the city, and the president of the civil service board, who was to subsequently participate in a hearing related to Hakanson's employment appeal. The particular statement in question was made by the assistant city manager, who commented at the commission meeting that the former risk manager (Hakanson) had failed to perform a task regarding the city's options for self-insurance plans. The Third DCA deemed that this statement did not constitute an offending ex parte communication simply because a civil service board member was in the audience. In addition, the Court noted that even if the incident was deemed an ex parte communication, Section 286.0115 requires that disclosure of the offending communication must be made by the public official either before or during the meeting at which final action is taken. Here, final action was not taken at the board meeting. 866 So. 2d at 107.

B. Constitutionality issues.

Based on the legislative history of Fla. Stat. § 286.0115, the primary intent of the Legislature was to remove the presumption of prejudice in any ex parte communication on a land use matter. However, it appears that the Florida Legislature may have attempted to circumvent the constitutional basis for the discouragement of ex parte communication: the basic requirement of due process that parties to quasi-judicial proceedings be informed of all of the facts upon which the commission acts.

In researching this matter, our office requested information from other county attorneys regarding their interpretation of this statute and the practices of other Boards. The response from other county attorneys was consistently in accord with Leon County's interpretation that the Florida Legislature has overstepped the bounds of constitutionality. This legislation notwithstanding, the policies of the responsive counties fell into two categories: those counties whose commissioners did not engage in ex parte communications, and those counties whose commissioners disclosed communications on the record of the proceeding. None of the responsive county attorneys agreed that this legislation did or could allow unmitigated ex parte communication, and it appears that, generally, those commissioners have acted accordingly.

C. Policies.

Policies should be adopted dealing with the issue of communication "off the record" between the public and staff and the Board/Council/Commission, especially in the context of a quasi-judicial proceeding. As mentioned previously, § 286.0115, Fla. Stat. allows local governments to establish a process by which ex parte communications may be made public in order to remove the presumption of prejudice.

The issue of ex parte communications has been addressed by Lake County in Section 14.00.07 of the Lake County Land Development Regulations, as follows:

A. *Application.* This subsection shall apply to all quasi-judicial proceedings in which public hearings are required or proceedings in which a property right is at issue. However, this subsection shall specifically exclude any proceedings or hearings in relation to the Comprehensive Plan Evaluation and Appraisal Report or amendments to the Comprehensive Plan.

B. *Communications between staff and public.* Oral and written communications between staff and members of the public shall be permitted and encouraged.

C. *Communication between the Board of County Commissioners and the public.* Members of the Board of County Commissioners shall be permitted to receive and participate in oral or written ex-parte communications regarding quasi-judicial matters before the Board, and any presumption of prejudice arising out of such ex-parte communications is hereby removed and declared non-existent, if all requirements of this section are followed as to any ex-parte communication:

1. Any oral ex-parte communication with a Board member relating to pending quasi-judicial action shall not be presumed prejudicial to the outcome of the matter if the subject matter of the communication and the identity of the person, group or entity with whom the communication took place is disclosed and made a part of the record in the quasi-judicial proceeding before final action on the matter.
2. Any written communication to a Board member from any source, regarding a pending quasi-judicial matter, shall not be deemed prejudicial to the outcome of the matter, if the written communication is made part of the record in the quasi-judicial proceeding before final action on the matter.
3. Board members may conduct site visits and may receive expert opinions regarding quasi-judicial matters pending before them, and such activities shall not be presumed prejudicial to the outcome of the matter if the existence of the investigation, site visit or expert opinion is disclosed and made a part of the record in the quasi-judicial proceeding before final action on the matter.

4. All disclosures required by this section must be made before or during the public meeting at which a vote is taken on the quasi-judicial matter so that persons having opinions contrary to those expressed in the ex-parte communication are given a reasonable opportunity to refute or respond to the communication.

D. *Communication between all other Board members and the public.* All communications concerning the case between any member of the general public, including the applicant and any board member, with the exception of the Board of County Commissioners, shall be prohibited unless made at the hearing on the case.

E. *Communication between Board members and staff.* Written and oral communications between the board and staff shall be limited to the facts of the application or case. Discussions of the positions or arguments of the applicant or members of the opposition shall be prohibited. Attorneys for the Board may render legal opinions when requested by the Board members, but shall not engage in factual determinations or advocate one party's position over another, except to the extent necessary to respond fully to a purely legal question.

Lake County also provides for the following:

Written communications. All written communications received by board members concerning an application or pending case shall be immediately turned over to the County Manager or designee. The County Manager or designee shall include the written communication in the file for public inspection. All such written communications shall be offered into evidence and received by the board into evidence subject to any objections by participants at the hearing.

Lake County Land Development Regulations, Sec. 14.00.06(D).

D. Consequences of Ex Parte Communication.

If it is determined, either before a hearing or thereafter, that off-the-record communication, either verbal or written, has been made with the decision makers, can this matter be cured in advance or re-reviewed by the same Board or Commission? If such a matter is presented for the first time during a Court challenge, what is the consequence of finding such ex parte communication? In the Jennings v. Dade County decision, the Court stated that:

Upon remand... the applicant shall be afforded an opportunity to amend his complaint. Upon such an amendment (the applicant) shall be provided an evidentiary hearing to present his prima facie case that ex parte contacts occurred. Upon such proof, prejudice shall be presumed. The burden will then switch to the respondents to rebut

the presumption that prejudice occurred to the claimant. Should the respondents produce enough evidence to dispel the presumption, then it will become the duty of the trial judge to determine the claim in light of all of the evidence in the case.

Jennings v. Dade County, 589 So. 2d 1337, 1342 (Fla. 3d DCA 1991), rev. den. 598 So. 2d 75 (Fla. 1992).

What the Jennings case did not address was the possibility that the respondents may not be able to rebut the presumption of ex parte contacts. In that instance, what becomes of the case? Are Board or Commission members now prejudiced and thus precluded forever to make a decision on the subject application? In that instance, who makes the decision, or is the request in the application automatically now granted where the Board had previously denied the request? What if the application really is inconsistent with the local comprehensive plan?

E. Additional Questions.

Should the general rules regarding voting conflicts be applicable to such decision-making? Should general knowledge of the community or specific knowledge of the subject project or property be sufficient to create a conflict?

Can the applicant "voir dire" the Commissioners, like selecting a jury, about what they do know? If such conflicts are present, would that subject one or more of the Board members to recusal upon request of either the staff or the applicant? If recusals based on prejudice or outside knowledge create a lack of a quorum, what would be the procedures that would then be followed? Would the Governor appoint a substitute to serve in the matter from which the individual is disqualified in the event a quorum no longer remains, as with the provisions set forth in Fla. Stat. § 120.71?

XI. ADVISING QUASI-JUDICIAL BOARDS

In Fla. Atty. Gen. Op. 72-64, the Attorney General advised an agency that in order to maintain fundamental fairness in administrative hearings, there should be a delegation of duties such that one attorney acts as a prosecutor while another serves as legal advisor to the board. In the case of Cherry Communications, Inc. v. Deason, 652 So.2d 803 (Fla. 1995), the Florida Supreme Court addressed the question of whether the same attorney who prosecutes a case on behalf of an agency may also serve to advise that agency in its deliberations. In this case, the Florida Supreme Court recognized the holding in Ford v. Bay County School Board, 246 So. 2d 119, 121-122 (Fla. 1st DCA 1970), which agreed with the wording of the opinion in Metropolitan Dade County v. Florida Processing Company, 218 So. 2d 495, 497 (Fla. 3d DCA 1969), wherein it was said:

It is sufficient for us to point out that it would be in closer accord with traditional notions of justice and fair play for a quasi-judicial administrative board to designate one person to act as its legal adviser and a different person to act as its prosecutor.

In the Ford case, the school board attorney acted as a prosecutor in a hearing, but did not proffer legal advice to the board during the hearing and was not present at the meeting at which the school board rendered its final judgment. Therefore, the court found that this scenario was not harmful to the petitioner and that the proceedings were conducted in a fair and impartial manner.

In Deason, however, while the functions of legal prosecutor and legal advisor were initially separated, the prosecutor was later invited into the commission's deliberations and submitted memoranda to the commission. The commission subsequently adopted the prosecutor's memoranda in its final order. The Florida Supreme Court held that the petitioner's due process rights were violated when the commission allowed the prosecutor to also serve as posthearing legal advisor.

Relying on the authority of Deason, the First District Court of Appeal likewise held that a litigant was not afforded procedural due process at a quasi-judicial proceeding before the county's grievance committee, because the county's legal counsel acted as both an advocate and proffered legal advice during the hearing. Brown v. Walton County, 667 So. 2d 376 (Fla. 1st DCA 1995).

Early this year the Fourth District Court of Appeal rendered its decision in the case of State of Florida, Department of Highway Safety and Motor Vehicles v. Tidey, 946 So. 2d 1223 (Fla. 4th DCA 2007). In this case, Tidey, after refusing to take a breath test upon being arrested for DUI, sent a letter to the department, requesting a formal review hearing with the department and further requesting recusal of all department employees from presiding as the hearing officer in his case. Tidey's request was denied by the department. He then filed a petition in the circuit court for a writ or prohibition, seeking disqualification of all department non-lawyer hearing officers and requesting that the department be required to retain "neutral detached magistrates." Id. at 1225. During the evidentiary hearing, Tidey presented testimony of three attorneys who stated that in their respective cases, the hearing officers of the department actually stopped their hearings to consult with the department's legal counsel about the admissibility of evidence. The trial court thus determined that the department allowed or encouraged its hearing officers to confer with staff attorneys on issues of law, a practice which the court "recognized as exposing the hearing officers to ex parte influence and conflict of interest." Id. at 1226. The Circuit Court thereupon granted the writ of prohibition, and further ordered that all driving privileges be reinstated.

Upon appeal, the Fourth DCA reversed the Circuit Court's judgment, and remanded for entry of an order denying the petition without prejudice. The Fourth DCA first noted that Tidey's petition sought to prevent the conduct of a hearing officer before one had been assigned. The Court also deemed it "significant" that the petition was not predicated on any events which had occurred at Tidey's hearing, because there had been no hearing. Id. The Court then found that Tidey's letter requesting recusal was not legally sufficient to support prohibition, in that the letter was not filed with the hearing officer before whom the case was pending; further, the letter sought relief of all department employees, which was beyond the scope of the recusal rule provided in the Florida Administrative Code. As to the various due process issues raised regarding the possibility that Tidey's rights might have been violated had the hearing taken place, the Fourth DCA found that such claims should be raised by a petition for writ of certiorari once the facts are known and presented on

the record. As to the Circuit Court's judgment prohibiting the department from allowing communications between its hearing officers and department staff attorneys, the Fourth DCA found that the trial court could not *sua sponte* grant injunctive relief for which none was prayed. Finally, the DCA concluded that the trial court went beyond the scope of procedure when it reinstated the driving privileges of the appellees.

XII. HEARING OFFICERS

In order to deal with the judicial nature of quasi-judicial proceedings, some jurisdictions have either adopted or are contemplating creating a position for a Hearing Officer. Such a Hearing Officer, trained in trial practice, conducts the hearing, then makes a recommended decision which the legislative body reviews without further *de novo* "judicial" proceedings. Lafayette County, for example, has used this methodology:

OFFICE OF THE COUNTY HEARING OFFICER.

Position. The Board of County Commissioners hereby creates the Office of the county hearing officer. The hearing officer shall have those powers and duties enumerated in the Lafayette County Land Development Code and other applicable county ordinances.

The hearing officer shall be hired on a part-time basis by the Lafayette County Board of County Commissioners, and shall serve at the pleasure of the Board. Any hearing officer may be removed at any time, with or without cause, by an absolute majority of the Board of County commissioners.

Because of the judicial nature of the position, the hearing officer shall report directly to the Board. The hearing officer will not represent clients in any action before the Board of County Commissioners nor accept any client or business which might cause an actual or perceived conflict of interest.

Qualifications. The hearing officer shall possess sufficient experience and expertise to carry out the duties of the position. The hearing officer shall exhibit demonstrated ability in the areas of local land use law and zoning, comprehensive planning, judicial and administrative procedure and knowledge of the rules of evidence. The hearing officer shall be licensed to practice law in the State of Florida and shall hold a law degree from an ABA accredited law school.

Lafayette County Code, Sec. 23.5.

Historically, local governments have considered delegating the rezoning and site plans consideration function to established boards or independent hearing officers. This is mostly done for

quasi-judicial functions, such as the granting of variances by boards of adjustment. This is a traditionally accepted "judicial" process and forum.

However, when such matters were considered to be legislative, this procedure was struck down on the basis that legislative decision making may not be delegated. Hillsborough County utilized such a procedure in the early 1980's until a trial court found it to be improper.

Since rezonings on site plan review may now be deemed quasi-judicial, perhaps delegation to a separate board hearing officer, whether their decisions are binding or advisory, may be appropriate to overcome legal or procedural obstacles and to provide technical expertise. A major negative is whether such a delegation would deprive the citizens of access to and use of their duly elected representatives.

While considering whether to install a hearing officer procedure, one must also consider whether or not, and under what circumstances, the hearing officer's decision might be binding. Would those hearing officers' decisions, even if binding, be "appealable" to the Board or Commission? If they are advisory only, does the Board or Commission conduct another full de novo trial, or should the matter be considered to be "on appeal" with its attendant appellate rules to the Board or Commission? At what juncture during this process would the ex parte rule come into play?

XIII. SPECIAL MASTERS

In late March of 2002, the Florida Legislature adopted CS/SB's 1906 & 550, which forged a number of changes to Part II of Chapter 163, Florida Statutes (the Local Government Comprehensive Planning and Land Development Act of 1985). Notably, Fla. Stat. § 163.3215, as revised by CS/SB's 1906 & 550, authorize a local government to establish a "special master process" to address quasi-judicial proceedings associated with development order challenges. If adopted by a local government, this optional special master or quasi-judicial process would afford more deference to the local government's decision if that decision is challenged.

To summarize, the new law provides a unique process with specific criteria by which local governments may process applications for development orders. The process requires the following procedures:

- (1) Uniform notice by either mail or publication of each application for permit or other development approval within 10 days of application;
- (2) Notice of appeal rights in publication or mail notice and posting at the job site;
- (3) A notice of intent of the local government's decision prior to finalizing the decision, this triggers the opportunity to request the quasi-judicial hearing before a special master;

- (4) Discovery prior to the special master hearing, including disclosure of witness lists and exhibits and an opportunity to depose witnesses;
- (5) Public testimony allowed at the formal hearing;
- (6) Formal hearing before a special master, who is an attorney with 5 years experience, who renders a recommended order;
- (7) Prohibition of ex parte communications (communications between the decision maker and the party or parties outside of the formal hearing).

If the special master process is implemented by a local government, the sole appeal method for either the developer/applicant or an affected third party, is by certiorari review, which is limited to a review of the record created during the special master process to determine whether the local government's decision is supported by competent, substantial evidence. If the special master process is not adopted, then both the developer/applicant and an affected third party, may challenge the local government's decision in a de novo hearing in circuit court. (A de novo action is a full evidentiary hearing wherein the local government's action is not afforded any deference, but the issue is heard as if for the first time. Prior to these revisions in the law, the remedy for the developer/applicant was by certiorari review, while the remedy for an affected third party was a de novo hearing.)

Should a local government adopt the optional special master process, it would benefit from the greater deference afforded its development order decisions when challenged by either the developer/applicant or an affected third party. Applicants and the public would benefit from a standardized process and a clear point of entry into the local government decision, rather than waiting until the decision is final and challenging that decision in a circuit court proceeding.

Another advantage to implementing the optional quasi-judicial process would be to avoid protracted circuit court litigation by providing the special master process in the first place. Under the new law, a party who is dissatisfied with the local government's decision expressed in its notice of intent, is afforded an opportunity to change the local government's decision in a less formal, less expensive and quicker proceeding than a de novo hearing would provide. Further, it is important to note that no development application would be required to undergo the special master process, only those which are contemplating challenge of the local governments decision as expressed in its notice of intent.

It is also important to note that under the new legislation, a local government may choose whether to offer the special master process as an option for all or only certain types of development orders, and may revisit that decision to add or delete the types of development orders to which it applies. For example, in 2003 Leon County adopted an ordinance providing for the special master process for "Type B" site and development plan applications. A copy is attached hereto as Exhibit 1.

Disadvantages of implementing the special master process could include lengthening the process for a local government to get to a final decision on the development application, as well as

increased costs if many special master hearings are requested. For example, the quasi-judicial proceeding may take more time since formal discovery is conducted prior to the hearing. In addition, although no party is required to be represented by an attorney in the special master process, the formality of the hearings may lead to increased time and costs.

XIV. CONCLUSION

In conclusion, in 1993, the Snyder case changed the way local governments review and process rezonings and site and land development plan applications. The process now usually involves quasi-judicial considerations and standards.

EXHIBIT 1

LEON COUNTY'S "SPECIAL MASTER" ORDINANCE

Sec. 10-1485.1. Special master proceedings.

(A) *Appointment of a special master.* From time to time the Board of County Commissioners shall appoint and retain special masters or shall contract with the Florida Division of Administrative Hearings for administrative law judges to conduct quasi-judicial proceedings regarding Type B site and development plan applications. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in land use law, real estate law, local governmental law, or administrative law. None of the special masters or the law firms with which they may be associated shall be representing clients before any agency of the county government or any agency of any municipality in the county during the period in which they serve as special master.

(B) *Term, compensation.* Each special master appointed and retained by the Board of County Commissioners shall serve at the pleasure of the board and shall be compensated at a rate or rates to be fixed by the board.

(C) *Ex parte communication.*

- (i) No county employee, elected official, or other person who is or may become a party to a proceeding before a special master shall engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and county staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the hearing.
- (ii) If a person engages in an ex parte communication with the special master, the special master shall place on the record of the pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received, and all oral responses made, and shall advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after notice of such communication. If he or she deems it necessary due to the effect of an ex parte communication received by him, the special master may withdraw from the case.
- (iii) After the receipt of a petition for quasi-judicial hearing before a special master, no party to the hearing may engage in any ex parte communication with a member of the

Board of County Commissioners regarding the pending application for Type B site and development plan or the issues in the pending hearing.

- (D) *Prohibition from acting as agent or attorney for subject matter.* A special master, and any firm with which he or she is or may become associated, is prohibited for a period of three years, after issuance of the decision on the application which was the subject of a quasi-judicial hearing in which he or she presided, from acting as an agent or attorney on any matter involving property which was the subject of the proceeding in which the special master presided. Violations of this subsection shall be prosecuted in the manner provided by general law.
- (E) *Timeliness of requests for quasi-judicial hearings and standing determinations.* All determinations on the timeliness of petitions and all determinations of standing will be made by the county attorney.
- (F) *Powers of special masters.* The special masters who conduct quasi-judicial proceedings pursuant to this section shall have the powers of hearing officers enumerated in F.S. § 120.569(2)(f), as well as the power to compel entry upon the land.
- (G) *Prehearing requirements.* At least seven days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the final hearing.
- (H) *Hearings.*
- (i) All hearings shall be commenced within 45 days of the date the written preliminary decision of the [Development Review Committee ("DRC")] was rendered. Requests for continuance by any party, either before or during the hearing, may be considered upon good cause shown.
 - (ii) All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 14 days prior to the date of the hearing.
 - (iii) The participants before the special master shall be the applicant, the applicant's witnesses, if any, county staff, and other parties as the term "party" is defined in section 10-1621 of this Code, if any, and witnesses of the parties, if any. Any party who is not the applicant or county staff who participates at the hearing shall leave his or her mailing address with the special master.
 - (iv) Testimony and evidence shall be limited to matters directly relating to the application and development. Irrelevant, immaterial or unduly repetitious testimony or evidence may be excluded.

(v) All testimony shall be under oath. The order of presentation of testimony and evidence shall be as follows:

- a. The party challenging the DRC's written preliminary recommendation and his or her witnesses, if any.
- b. The applicant, if not the party challenging the DRC's written preliminary decision, and his or her witnesses, if any.
- c. The county, and his or her witnesses, if any, including county staff.
- d. Comments by the public, if any.

(vi) To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence. During cross examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate. To that end, if during the hearing the special master believes that any facts, claims, or allegations necessitate review and response by the applicant, staff, or both, then the special master may order the hearing continued until a date certain. The special master shall decide all questions of procedure and standing.

(vii) The standard of review applied by the special master in determining whether a proposed development order is consistent with the comprehensive plan shall be strict scrutiny in accordance with Florida law.

(viii) The special master shall render a recommended order on the application to the Board of County Commissioners within ten days after the hearing concludes, unless the parties waive the time requirement. The recommended order shall contain written findings of fact, conclusions of law, and a recommendation to approve, approve with conditions, or deny the application. A copy of the recommended order shall be mailed to the party who requested the hearing, the applicant and any other interested member of the public who participated at the hearing.

(I) *Action by Board of County Commissioners.* Upon receipt of the special master's recommended order, the board shall take up the matter pursuant to section 10-1489 of this Code.

ORDINANCE NO. 07-27

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 2 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, BY ADDING A NEW ARTICLE XII TO BE ENTITLED "LOBBYIST REGULATIONS"; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION OF LOBBYISTS; PROVIDING FOR EXEMPTIONS; PROVIDING FOR VALIDITY OF ACTION; PROVIDING FOR QUARTERLY COMPENSATION REPORT; PROVIDING FOR MAINTAINING REGISTRATIONS AND COMPENSATION REPORTS; PROVIDING FOR PROHIBITED CONDUCT OF COUNTY OFFICIALS AND EMPLOYEES; PROVIDING FOR PROHIBITED COMMUNICATIONS; PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners desires to adopt an ordinance to provide for regulations of lobbyists who appear before Leon County government;

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, THAT:

Section 1. Chapter 2 of the Code of Laws of Leon County, Florida, is hereby amended by adding a new Article XII entitled "Lobbyist Regulations," which shall read as follows:

ARTICLE XII. LOBBYIST REGULATIONS

Sec. 2-700. Definitions.

(a) *Lobbying* shall mean communications, whether written or oral, by a lobbyist outside a duly noticed public meeting or hearing on the record with any member or members of the Board of County Commissioners, or any member or members of any decision-making body under the jurisdiction of the Board, or any county employee, whereby the lobbyist seeks to encourage or influence the passage, defeat, modification or repeal of any item which may be

presented for vote before the Board of County Commissioners, or any decision-making body under the jurisdiction of the Board, or which may be presented for consideration by a county employee as a recommendation to the Board or decision-making body.

(b) "Lobbyist" means a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity.

(c) "Lobbying firm" means a business entity, including an individual contract lobbyist, that receives or becomes entitled to receive any compensation for the purpose of lobbying, where any partner, owner, officer, or employee of the business entity is a lobbyist.

(d) *Principal* shall mean a person, firm, corporation, or other legal entity which has employed or retained a lobbyist.

(e) *Employee* shall mean the County Administrator, County Attorney, Executive Director of Tourist Development, Commission Staff, and all persons employed by the Board of County Commissioners.

(f) *Decision-making body* shall mean any body established by the Board of County Commissioners.

Sec. 2-701. Registration of lobbyists.

All lobbyists, as defined herein, shall register with the Clerk of the Board of County Commissioners on an annual basis, including payment of a \$25.00 fee for each principal so represented, prior to engaging in any lobbying. Registration shall be updated to add or withdraw principals before a lobbyist commences lobbying on behalf of any new principle. Each lobbyist shall be required to register on forms prepared by the Clerk of the Board. The lobbyist shall state

under oath his or her name, business address, the name and business address of each principal represented, that the principal has actually retained the lobbyist, the general and specific areas of legislative interest, and the nature and extent of any direct business association or partnership with any current member of the Board of County Commissioners, County employee, or person sitting on a decision-making body. Each lobbying firm may register in the name of such firm, corporation or legal entity, provided the registration shall list the names of all persons who engage in lobbying as defined in this Article. Failure to register, or providing false information in the lobbyist registration form, shall constitute a violation of this Article.

Sec. 2-702. Exemptions.

The following persons are not lobbyists as defined in Section 2-700(b), and shall not be required to register as lobbyists or to keep records as lobbyists:

- (a) Leon County employees discussing government business;
- (b) Law enforcement personnel conducting an investigation;
- (c) Persons who communicate with Board members or employees in an individual capacity for the purpose of self-representation, or on behalf of a family member, without compensation or reimbursement;
- (d) Consultants under contract with Leon County who communicate with Commissioners or County employees regarding issues related to the scope of services in their contract;
- (e) Any government officials or employees who are acting in their official capacity or in the normal course of their duties, unless they are proposing in a competitive procurement, or are government employees principally employed for, or whose substantial duties pertain to, governmental affairs lobbying;

(f) Persons who make purely factual informational requests to a member of the Board of County Commissioners, member of a decision-making body, or employee with no intent to affect a decision or recommendation on any item; and

(g) Persons or representatives of organizations contacted by a member of the Board of County Commissioners, member of a decision-making board, or employee when the contact is initiated by that Board member, decision-making board member, or employee in his or her official capacity in the normal course of his or her duties to obtain factual information only.

Sec. 2-703. Validity of Action.

The validity of any decision, action, or determination made by the Commission, decision-making board or employee shall not be affected by the failure of any person to comply with the provisions of this Article.

Sec. 2-704. Quarterly Compensation Report.

Each lobbying firm shall file a compensation report, signed under oath, with the Clerk of the Board of County Commissioners for each calendar quarter during any portion of which such a lobbyist or lobbyist firm was registered under this Article to represent a principal (hereinafter "Reporting Period").

(a) Each lobbying firm shall file a quarterly compensation report with the Clerk of the Board for each calendar quarter during any portion of which the lobbyist or one or more of the firm's lobbyists were registered to represent a principal. The report shall include the:

1. Full name, business address, and telephone number of the lobbying firm;
2. Name of each of the firm's lobbyists; and
3. Total compensation provided or owed to the lobbying firm from all principals for the reporting period, reported in one of the following categories: \$0; \$1 to

\$49,999; \$50,000 to \$99,999; \$100,000 to \$249,999; \$250,000 to \$499,999;
\$500,000 to \$999,999; \$1 million or more.

(b) For each principal represented by one or more of the firm's lobbyists, the quarterly compensation report shall also include the:

1. Full name, business address, and telephone number of the principal; and
2. Total compensation provided or owed to the lobbying firm for the reporting period from such principal, reported in one of the following categories: \$0; \$1 to \$9,999; \$10,000 to \$19,999; \$20,000 to \$29,999; \$30,000 to \$39,999; \$40,000 to \$49,999; or \$50,000 or more. If the category "\$50,000 or more" is selected, the specific dollar amount of compensation must be reported, rounded up or down to the nearest \$1,000.

(c) The quarterly compensation reports shall be filed no later than 30 days after the end of each reporting period. The four reporting periods are from January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31, respectively. The quarterly compensation reports shall be filed in the form provided by the Clerk of the Board of County Commissioners.

Sec. 2-705. Maintaining Registrations and Compensation Reports.

The Clerk of the Board of County Commissioners shall accept and maintain the lobbyist registrations and quarterly compensation reports, which shall be open for public inspection.

Sec. 2-706. Prohibited Conduct of County Officials and Employees.

No member of the Board of County Commissioners or employee of Leon County shall solicit or accept as compensation, payment, favor, service, or thing of value from a lobbyist or principal when such member of the Board of County Commissioners or employee, as specified

above, knows, or with the exercise of reasonable care, should know, that it was given to influence a vote or recommendation favorable to the lobbyist or principal.

Sec. 2-707. Prohibited Communication.

(a) Any form of communication, except for written correspondence, shall be prohibited regarding a particular request for proposal, request for qualification, bid, or any other competitive solicitation between:

1. Any person or person's representative seeking an award from such competitive solicitation; and
2. Any County Commissioner or Commissioner's staff, or any County employee authorized to act on behalf of the Commission to award a particular contract.

(b) For the purpose of this section, a person's representative shall include, but not be limited to, the person's employee, partner, officer, director, consultant, lobbyist, or any actual or potential subcontractor or consultant of the person.

(c) The prohibited communication shall be in effect as of the deadline to submit the proposal, bid, or other response to a competitive solicitation. Each request for proposal, request for qualification, bid, or any other competitive solicitation shall provide notice of the provisions of this section.

(d) The provisions of this section shall not apply to oral communications at any public proceeding, including pre-bid conferences, oral presentations before selection committees, contract negotiations during any public meetings, presentations made to the Board, and protest hearings. Further, the provisions of this section shall not apply to contract negotiations between any employee and the intended awardee, any dispute resolution process following the filing of a

protest between the person filing the protest and any employee, or any written correspondence with any employee, County Commissioner, or decision-making board member or selection committee member, unless specifically prohibited by the applicable competitive solicitation process.

(e) The provisions of this section shall not apply to any purchases made in an amount less than the competitive bid threshold of \$20,000.00, as set forth in Leon County Purchasing Policy No. 96-1, as amended.

(f) The provisions of this section shall terminate at the time the Board, or a County department authorized to act on behalf of the Board, awards or approves a contract, rejects all bids or responses, or otherwise takes action which ends the solicitation process.

Sec. 2-708. Penalties.

The penalties for an intentional violation of this article shall be those specified in §125.69(1), Florida Statutes, as amended, and shall be deemed supplemental to the penalties set forth in Section 1-9 of this Code.

Section 2. Severability. If any provisions or portions of this Ordinance are declared by any court of competent jurisdiction to be void, unconstitutional, or unenforceable, then all remaining provisions and portions of this Ordinance shall remain in full force and effect.

Section 3. Effective Date. This ordinance shall have effect upon becoming law.

DONE, ADOPTED AND PASSED by the Board of County Commissioners of Leon County, Florida this 11th day of December, 2007.

LEON COUNTY, FLORIDA

By: Jane G. Sauls
Jane G. Sauls, Chairman
Board of County Commissioners



ATTESTED BY:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

By: John Stott, Deputy Clerk
Bob Inzer, Clerk of Court
Leon County, Florida

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By: Herbert W. A. Thiele
Herbert W. A. Thiele, Esq.
County Attorney

Board of County Commissioners

Leon County, Florida

Policy No. 03-05

Title: Code of Ethics
 Date Adopted: December 11, 2007
 Effective Date: December 11, 2007
 Reference: Chapter 112, Florida Statutes; Leon County Ordinance No. 07-27
 (Lobbyist Regulations)
 Policy Superseded: Amending Policy No. 03-05, "Code of Ethics," adopted February 10, 2004;
 Amending Policy No. 03-05, "Code of Ethics," adopted March 18, 2003;
 Superseding Policy No. 02-08, adopted July 30, 2002

Policy No. 03-05, Code of Ethics, adopted by the Leon County Board of County Commissioners on February 10, 2004, is hereby amended to read as follows:

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that this policy shall apply to the members of the Board of County Commissioners and its employees, as well as to all members of appointed boards and committees that have been created by the Board of County Commissioners.

Section 1. Code of Ethics.

This Policy shall be known as the Leon County Code of Ethics.

If any word, phrase, clause, section or portion of this policy shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

This policy shall take effect upon being approved by a majority vote of the Board of County Commissioners.

Section 2. Intent and Purpose.

The proper operation of County government requires that County Commissioners be independent and impartial; that County policy and decisions be made through established processes; that County Commissioners not use public office to obtain private benefit; that County Commissioners avoid actions which create the appearance of using public office to obtain a benefit; and that the public have confidence in the integrity of its County government and County Commissioners.

Section 3. Acknowledgment.

All County Commissioners, upon taking their oath of office to their current term and all current County Commissioners within ten (10) days of the passage hereof, shall submit a signed statement to the County Attorney acknowledging that they have received and read the Leon County Code of Ethics, that they understand it, and that they are bound by it.

All candidates for County Commission, upon qualifying to run for that office, shall submit a signed statement to the Clerk to the Board located at the Clerk of Court's Office, Finance Department, Room 450, 315 South Calhoun Street, Tallahassee, Florida 32301, acknowledging that they have received and read the Leon County Code of Ethics, that they understand it, and that they shall be bound by it upon election to office.

Section 4. Interpretation, Advisory Opinions.

When in doubt as to the applicability and interpretation of the Leon County Code of Ethics, any County Commissioner may request an advisory opinion from the County Attorney's Office. The County Attorney's Office shall keep a file, open to the public, of all written opinions issued and submit a copy of each opinion rendered to every County Commissioner.

Any County Commissioner may request a review by the Board of County Commissioners of any advisory opinion within thirty (30) days of its issuance or it shall become final. A majority vote of the Board of County Commissioners shall be the final determination of said opinion.

Section 5. Definitions.

- I. "Advisory body" means any board, commission, committee, council, or authority, however selected, whose total budget, appropriations, or authorized expenditures constitute less than 1 percent of the budget of each agency it serves or \$100,000, whichever is less, and whose powers, jurisdiction, and authority are solely advisory and do not include the final determination or adjudication of any personal or property rights, duties, or obligations, other than those relating to its internal operations.
- II. "Agency" means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.
- III. "Breach of the public trust" means a violation of a provision of the State Constitution or this part which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of this part.

- IV. "Business associate" means any person or entity engaged in or carrying on a business enterprise with a public officer, public employee, or candidate as a partner, joint venturer, corporate shareholder where the shares of such corporation are not listed on any national or regional stock exchange, or co-owner of property.
- V. "Business entity" means any corporation, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state.
- VI. "Candidate" means any person who has filed a statement of financial interest and qualification papers, has subscribed to the candidate's oath as required by s. 99.021, and seeks by election to become a public officer. This definition expressly excludes a committeeman or committeewoman regulated by chapter 103 and persons seeking any other office or position in a political party.
- VII. "Commission" means the Commission on Ethics created by s. 112.320 or any successor to which its duties are transferred.
- VIII. "Conflict" or "conflict of interest" means a situation in which regard for a private interest tends to lead to disregard of a public duty or interest.
- IX. "Corruptly" means done with a wrongful intent and for the purpose of obtaining, or compensating or receiving compensation for, any benefit resulting from some act or omission of a public servant which is inconsistent with the proper performance of his or her public duties.
- X. "Disclosure period" means the taxable year for the person or business entity, whether based on a calendar or fiscal year, immediately preceding the date on which, or the last day of the period during which, the financial disclosure statement required by this part is required to be filed.
- XI. "Facts materially related to the complaint at issue" means facts which tend to show a violation of this part or s. 8, Art. II of the State Constitution by the alleged violator other than those alleged in the complaint and consisting of separate instances of the same or similar conduct as alleged in the complaint, or which tend to show an additional violation of this part or s. 8, Art. II of the State Constitution by the alleged violator which arises out of or in connection with the allegations of the complaint.

XII.

- A. "Gift," for purposes of ethics in government and financial disclosure required by law, means that which is accepted by a donee or by another on the donee's behalf, or that which is paid or given to another for or on behalf of a donee, directly, indirectly, or in trust for the donee's benefit or by any other means, for which equal or greater consideration is not given within 90 days, including:
1. Real property.
 2. The use of real property.
 3. Tangible or intangible personal property.
 4. The use of tangible or intangible personal property.
 5. A preferential rate or terms on a debt, loan, goods, or services, which rate is below the customary rate and is not either a government rate available to all other similarly situated government employees or officials or a rate which is available to similarly situated members of the public by virtue of occupation, affiliation, age, religion, sex, or national origin.
 6. Forgiveness of indebtedness.
 7. Transportation, other than that provided to a public officer or employee by an agency in relation to officially approved governmental business, lodging, or parking.
 8. Food or beverage.
 9. Membership dues.
 10. Entrance fees, admission fees, or tickets to events, performances, or facilities.
 11. Plants, flowers, or floral arrangements.
 12. Services provided by persons pursuant to a professional license or certificate.
 13. Other personal services for which a fee is normally charged by the person providing the services.
 14. Any other similar service or thing having an attributable value not already provided for in this section.
- B. "Gift" does not include:
1. Salary, benefits, services, fees, commissions, gifts, or expenses associated primarily with the donee's employment, business, or service as an officer or director of a corporation or organization.

2. Contributions or expenditures reported pursuant to chapter 106, campaign-related personal services provided without compensation by individuals volunteering their time, or any other contribution or expenditure by a political party.
 3. An honorarium or an expense related to an honorarium event paid to a person or the person's spouse.
 4. An award, plaque, certificate, or similar personalized item given in recognition of the donee's public, civic, charitable, or professional service.
 5. An honorary membership in a service or fraternal organization presented merely as a courtesy by such organization.
 6. The use of a public facility or public property, made available by a governmental agency, for a public purpose.
 7. Transportation provided to a public officer or employee by an agency in relation to officially approved governmental business.
 8. Gifts provided directly or indirectly by a state, regional, or national organization which promotes the exchange of ideas between, or the professional development of, governmental officials or employees, and whose membership is primarily composed of elected or appointed public officials or staff, to members of that organization or officials or staff of a governmental agency that is a member of that organization.
- C. For the purposes of paragraph (a), "intangible personal property" means property as defined in s. 192.001(11)(b), Florida Statutes.
- D. For the purposes of paragraph (a), the term "consideration" does not include a promise to pay or otherwise provide something of value unless the promise is in writing and enforceable through the courts.
- XIII. "Indirect" or "indirect interest" means an interest in which legal title is held by another as trustee or other representative capacity, but the equitable or beneficial interest is held by the person required to file under this part.
- XIV. "Liability" means any monetary debt or obligation owed by the reporting person to another person, entity, or governmental entity, except for credit card and retail installment accounts, taxes owed unless reduced to a judgment, indebtedness on a life insurance policy owed to the company of issuance, contingent liabilities, or accrued income taxes on net unrealized appreciation. Each liability which is required to be disclosed by s. 8, Art. II of the State Constitution shall identify the name and address of the creditor.
- XV. "Material interest" means direct or indirect ownership of more than 5 percent of the total assets or capital stock of any business entity. For the purposes of this act, indirect ownership does not include ownership by a spouse or minor child.

- XVI. "Materially affected" means involving an interest in real property located within the jurisdiction of the official's agency or involving an investment in a business entity, source of income or a position of employment, office, or management in any business entity located within the jurisdiction or doing business within the jurisdiction of the official's agency which is or will be affected in a substantially different manner or degree than the manner or degree in which the public in general will be affected or, if the matter affects only a special class of persons, then affected in a substantially different manner or degree than the manner or degree in which such class will be affected.
- XVII. "Ministerial matter" means action that a person takes in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken.
- XVIII. "Parties materially related to the complaint at issue" means any other public officer or employee within the same agency as the alleged violator who has engaged in the same conduct as that alleged in the complaint, or any other public officer or employee who has participated with the alleged violator in the alleged violation as a coconspirator or as an aider and abettor.
- XIX. "Person or business entities provided a grant or privilege to operate" includes state and federally chartered banks, state and federal savings and loan associations, cemetery companies, insurance companies, mortgage companies, credit unions, small loan companies, alcoholic beverage licensees, pari-mutuel wagering companies, utility companies, and entities controlled by the Public Service Commission or granted a franchise to operate by either a city or county government.
- XX. "Purchasing agent" means a public officer or employee having the authority to commit the expenditure of public funds through a contract for, or the purchase of, any goods, services, or interest in real property for an agency, as opposed to the authority to request or requisition a contract or purchase by another person.
- XXI. "Relative," unless otherwise specified in this part, means an individual who is related to a public officer or employee as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, half sister, grandparent, great grandparent, grandchild, great grandchild, step grandparent, step great grandparent, step grandchild, step great grandchild, person who is engaged to be married to the public officer or employee or who otherwise holds himself or herself out as or is generally known as the person whom the public officer or employee intends to marry or with whom the public officer or employee intends to form a household, or any other natural person having the same legal residence as the public officer or employee.

XXII. "Represent" or "representation" means actual physical attendance on behalf of a client in an agency proceeding, the writing of letters or filing of documents on behalf of a client, and personal communications made with the officers or employees of any agency on behalf of a client.

XXIII. "Source" means the name, address, and description of the principal business activity of a person or business entity.

XXIV. "Value of real property" means the most recently assessed value in lieu of a more current appraisal.

Section 6. Standards of Conduct.

- I. Definitions. As used in this Section, unless the context otherwise requires, the following terms shall be defined as follows:
- A. "County Officer" shall include any person elected or appointed to hold office in the Leon County government, including any person serving on an advisory body.
 - B. "County Commissioner" shall include any member of the Leon County Board of County Commissioners.
 - C. "County Employee" shall include any person employed by the Leon County Board of County Commissioners.
- II. Solicitation or Acceptance of Gifts. No County Officer or County Employee shall solicit or accept anything of value to the recipient, including a gift, loan, reward, promise of future employment, favor, or service, based upon any understanding that the vote, official action, or judgment of the County Officer, County Employee, local government attorney, or candidate would be influenced thereby.
- III. Doing Business with One's Agency. No County Employee acting in his or her official capacity as a purchasing agent, or County Officer acting in his or her official capacity, shall either directly or indirectly purchase, rent, or lease any realty, goods, or services for his or her own agency from any business entity of which the County Officer or County Employee or the County Officer's or County Employee's spouse or child is an officer, partner, director, or proprietor or in which such County Officer or County Employee or the County Officer's or County Employee's spouse or child, or any combination of them, has a material interest. Nor shall a County Officer or County Employee, acting in a private capacity, rent, lease, or sell any realty, goods, or services to the County. This subsection shall not affect or be construed to prohibit contracts entered into prior to:
- A. October 1, 1975.
 - B. Qualification for elective office.
 - C. Appointment to public office.
 - D. Beginning public employment.

- IV. **Unauthorized Compensation.** No County Officer or County Employee or his or her spouse or minor child shall, at any time, accept any compensation, payment, or thing of value when such County Officer, or County Employee, or local government attorney knows, or, with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the County Officer or County Employee was expected to participate in his or her official capacity.
- V. **Salary and Expenses.** No County Commissioner shall be prohibited from voting on a matter affecting his or her salary, expenses, or other compensation as a County Officer, as provided by law. The County Attorney shall not be prevented from considering any matter affecting his or her salary, expenses, or other compensation as the local government attorney, as provided by law.
- VI. **Misuse of Public Position.** No County Officer or County Employee shall corruptly use or attempt to use his or her official position or any property or resource which may be within his or her trust, or perform his or her official duties, to secure a special privilege, benefit, or exemption for himself, herself, or others. This section shall not be construed to conflict with s. 104.31, Florida Statutes.
- VII. **Conflicting Employment or Contractual Relationship.**
- A. No County Officer or County Employee shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, Leon County, excluding those organizations and their officers who, when acting in their official capacity, enter into or negotiate a collective bargaining contract with the state or any municipality, county, or other political subdivision of the state; nor shall a County Officer or County Employee have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties or that would impede the full and faithful discharge of his or her public duties.
- If the Leon County Board of County Commissioners exercises regulatory power over a business entity residing in another agency, or when the regulatory power which the legislative body exercises over the business entity or agency is strictly through the enactment of laws or ordinances, then employment or a contractual relationship with such business entity by a County Officer or County Employee shall not be prohibited by this subsection or be deemed a conflict.
- B. This subsection shall not prohibit a County Officer or County Employee from practicing in a particular profession or occupation when such practice is required or permitted by law or ordinance.

- VIII. Disclosure or Use of Certain Information. No County Officer or County Employee shall disclose or use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
- IX. Post-Employment Restrictions; Standards of Conduct. No County Officer or County Employee shall personally represent another person or entity for compensation before Leon County Board of County Commissioners for a period of 2 years following vacation of office.
- X. County Employees Holding Office.
- A. No County Employee shall hold office as a member of the Leon County Board of County Commissioners while, at the same time, continuing as a County Employee.
- B. The provisions of this subsection shall not apply to any person holding office in violation of such provisions on the effective date of this act. However, such a person shall surrender his or her conflicting employment prior to seeking reelection or accepting reappointment to office.
- C. Exemption. The requirements of Subsection III, "Doing Business With One's Agency," and Subsection VII, "Conflicting Employment or Contractual Relationship," as they pertain to persons serving on advisory boards may be waived in a particular instance by the body which appointed the person to the advisory board, upon a full disclosure of the transaction or relationship to the appointing body prior to the waiver and an affirmative vote in favor of waiver by two-thirds vote of that body. In instances in which appointment to the advisory board is made by an individual, waiver may be effected, after public hearing, by a determination by the appointing entity and full disclosure of the transaction or relationship by the appointee to the appointing entity. In addition, no person shall be held in violation of Subsection III, "Doing Business With One's Agency," and Subsection VII, "Conflicting Employment or Contractual Relationship" if:
1. Within a city or county the business is transacted under a rotation system whereby the business transactions are rotated among all qualified suppliers of the goods or services within the city or county.
 2. The business is awarded under a system of sealed, competitive bidding to the lowest or best bidder and:
 - a. The official or the official's spouse or child has in no way participated in the determination of the bid specifications or the determination of the lowest or best bidder.
 - b. The official or the official's spouse or child has in no way used or attempted to use the official's influence to persuade the agency or any personnel thereof to enter such a contract other than by the mere submission of the bid; and

- c. The official, prior to or at the time of the submission of the bid, has filed a statement with the County.
3. The purchase or sale is for legal advertising in a newspaper, for any utilities service, or for passage on a common carrier.
4. An emergency purchase or contract which would otherwise violate a provision of Subsection III, "Doing Business with One's Agency," and Subsection VII, "Conflicting Employment or Contractual Relationship," must be made in order to protect the health, safety, or welfare of the citizens of the state or any political subdivision thereof.
5. The business entity involved is the only source of supply within the political subdivision of the County Officer or County Employee and there is full disclosure by the County Officer or County Employee of his or her interest in the business entity to the governing body of the political subdivision prior to the purchase, rental, sale, leasing, or other business being transacted.
6. The total amount of the transactions in the aggregate between the business entity and the agency does not exceed \$500 per calendar year.
7. The fact that a County Officer or County Employee is a stockholder, officer, or director of a bank will not bar such bank from qualifying as a depository of funds coming under the jurisdiction of Leon County, provided it appears in the record that the Board of County Commissioners has determined that such County Officer or County Employee has not favored such bank over other qualified banks.
8. The County Officer or County Employee purchases in a private capacity goods or services, at a price and upon terms available to similarly situated members of the general public, from a business entity which is doing business with Leon County.
9. The County Officer or County Employee in a private capacity purchases goods or services from a business entity which is subject to the regulation of Leon County and:
 - a. The price and terms of the transaction are available to similarly situated members of the general public; and
 - b. The County Officer or County Employee makes full disclosure of the relationship to the Board of County Commissioners prior to the transaction.

- XI. Additional Exemption. No County Officer or County Employee shall be held in violation of Subsection III, "Doing Business With One's Agency," or Subsection VII, "Conflicting Employment or Contractual Relationship," if the officer maintains an employment relationship with an entity which is currently a tax-exempt organization under s. 501(c) of the Internal Revenue Code and which contracts with or otherwise enters into a business relationship with Leon County, and:
- A. The County Officer's employment is not directly or indirectly compensated as a result of such contract or business relationship;
 - B. The County Officer has in no way participated in the County's decision to contract or to enter into the business relationship with his or her employer, whether by participating in discussion at the meeting, by communicating with County Officers or County Employees, or otherwise; and
 - C. The County Officer abstains from voting on any matter which may come before the Board of County Commissioners involving the officer's employer, publicly states to the assembly the nature of the County Officer's interest in the matter from which he or she is abstaining, and files a written memorandum as provided in s.112.3143, Florida Statutes.
- XII. Non-Interference in County Real Estate Transactions. The following provisions are intended to assure the integrity of the competitive bidding process is preserved, agreements are negotiated at arms-length and consistently enforced, and that no County Commissioner utilizes his or her position or any property within his or her trust, to secure a special privilege, benefit, or exemption for himself, herself, or others.
- A. Definitions. As used in this subsection, unless the context otherwise requires, following terms shall be defined as follows:
 - 1. "County Real Estate Transaction" shall include any existing or proposed real estate transaction in which Leon County is involved as either a buyer, seller, lessee, lessor, or is otherwise involved as a party.
 - 2. "Communicate" or "Communication" shall include one-on-one meetings, discussions, telephone calls, e-mails, and the use of other persons to convey information or receive information.
 - 3. "Property Manager" shall mean the individual or entity retained by the Board of County Commissioners to lease and manage any County-owned property.

B. Restricted Communication With Parties to County Real Estate Transactions.

1. No County Commissioner shall knowingly communicate with any individual or entity, or their employees, officers, or agents, involved as a party in any County Real Estate Transaction, unless the communication is:
 - a. Part of the transactional process expressly described in a request for bids or other such solicitation invitation;
 - b. Part of a noticed meeting of the Board of County Commissioners; or
 - c. Incidental and does not include any substantive issues involving a County Real Estate Transaction in which such individual or entity is a party.
2. Any Board member who receives a communication in violation of this subsection shall place in the record at the next regular meeting of the Board of County Commissioners, the following:
 - a. Any and all such written communications;
 - b. Memoranda stating the substance of any and all such oral communications; and
 - c. Any and all written responses to such communications, and memoranda stating the substance of any and all oral responses thereto.

C. Restricted Communication With County Employees and Property Manager.

1. No County Commissioner shall directly or indirectly coerce or attempt to coerce the County Administrator, the County Attorney, any other County Employee, or the Property Manager, with respect to any County Real Estate Transaction.
2. In accordance with the Board of County Commissioners Policy No. 03-01 and the Leon County Administrative Code, the County Administrator or his designee shall be responsible for the management of any County-owned property, including the enforcement and termination of lease and license agreements. Except for the purpose of inquiry, County Commissioners shall not communicate directly or indirectly, give directions or otherwise interfere with these property management responsibilities.

3. Any communication outside a noticed meeting of the Board of County Commissioners between a County Commissioner, or their Aide, and the County Administrator, the County Attorney, any County Employee, and/or the Property Manager, which communication involves a substantive issue in a County Real Estate Transaction, shall be summarized in writing no later than three (3) working days after the communication (the Communication Summary), as follows:
 - a. While it is preferred that the template provided on the County intranet is utilized for the Communication Summary, another form of effective written communication, such as e-mail, is acceptable.
 - b. The Communication Summary shall include, at a minimum, the name of the persons involved in the communication, the date of the communication, the subject matter of the communication, and the way in which the communication was ended. The Communication Summary may also include the remarks of the persons involved.
4. The completed Communication Summary shall be forwarded to the Chairperson of the Board of County Commissioners, unless the communication involved the Chairperson in which case it shall be forwarded to the Vice-Chairperson, and a copy of the Communication Summary shall be forwarded to the County Administrator and the County Attorney.

Section 7. Voting Conflicts.

- I. As used in this section:
 - A. "County Officer" includes any person elected or appointed to hold office in the Leon County government, including any person serving on an advisory body.
 - B. "Relative" means any father, mother, son, daughter, husband, wife, brother, sister, father-in-law, mother-in-law, son-in-law, or daughter-in-law.
 - C. No County Officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2), Florida Statutes; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the County Officer. Such County Officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

However, a commissioner of a community redevelopment agency created or designated pursuant to s. 163.356 or s. 163.357, or an officer of an independent special tax district elected on a one-acre, one-vote basis, is not prohibited from voting, when voting in said capacity.

- D. No appointed County Officer shall participate in any matter which would inure to the officer's special private gain or loss; which the officer knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained; or which he or she knows would inure to the special private gain or loss of a relative or business associate of the County Officer, without first disclosing the nature of his or her interest in the matter.
1. Such disclosure, indicating the nature of the conflict, shall be made in a written memorandum filed with the person responsible for recording the minutes of the meeting, prior to the meeting in which consideration of the matter will take place, and shall be incorporated into the minutes. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.
 2. In the event that disclosure has not been made prior to the meeting or that any conflict is unknown prior to the meeting, the disclosure shall be made orally at the meeting when it becomes known that a conflict exists. A written memorandum disclosing the nature of the conflict shall then be filed within 15 days after the oral disclosure with the person responsible for recording the minutes of the meeting and shall be incorporated into the minutes of the meeting at which the oral disclosure was made. Any such memorandum shall become a public record upon filing, shall immediately be provided to the other members of the agency, and shall be read publicly at the next meeting held subsequent to the filing of this written memorandum.
 3. For purposes of this subsection, the term "participate" means any attempt to influence the decision by oral or written communication, whether made by the officer or at the officer's direction.
- E. Whenever a county officer or former county officer is being considered for appointment or reappointment to public office, the appointing body shall consider the number and nature of the memoranda of conflict previously filed under this section by said officer.

Section 8. Use of Office for Political Campaigns or Personal Matters.

Use of Leon County resources, including but not limited to material goods and the use of office staff and/or County personnel, for either political campaign purposes or other personal matters, is strictly forbidden.

Section 9. Investigation and Prosecution of Alleged Violation of Code of Ethics.

The investigation and prosecution of any alleged violation of this Code of Ethics shall be in accordance with the Florida Statutes or local ordinances.

Section 10. Conflicts Between this Policy and Florida Statutes.

The Florida Statutes shall apply in the event of any conflict between this adopted policy and the Florida Statutes.

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