

TOWN OF HILLSBORO BEACH, FLORIDA

ORDINANCE NO. 257

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA; AMENDING CHAPTER 6-1/2 OF THE TOWN OF HILLSBORO BEACH CODE OF ORDINANCES, ENTITLED "LAND USE AND DEVELOPMENT", BY CREATING ARTICLE 6-1/2-31, TO BE ENTITLED "QUASI-JUDICIAL PROCEEDINGS"; PROVIDING FOR THE INTENT; PROVIDING FOR DEFINITIONS; IDENTIFYING QUASI-JUDICIAL MATTERS; PROVIDING PROCEDURES FOR QUASI-JUDICIAL PROCEEDINGS, INCLUDING, BUT NOT LIMITED TO, EX PARTE COMMUNICATIONS, NOTIFICATION, PRESENTATION OF EVIDENCE AND PREPARATION OF THE ORDER; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Supreme Court has determined that the application of a general rule or policy to specific individuals, interests, or activities, based on testimony presented at a hearing, that does not affect a large portion of the public is quasi-judicial in nature; and

WHEREAS, the State Legislature has adopted a process to disclose ex parte communications in quasi-judicial proceedings with local government officials so that such communications will not be presumed to be prejudicial to the proceeding; and

WHEREAS, the Town Commission of the Town of Hillsboro Beach has determined it to be in the best interests of the citizens and residents of the Town to adopt procedures related to

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quasi-judicial proceedings, including a process whereby ex parte communications may be disclosed in an effort to avoid a prejudicial impact on quasi-judicial proceedings.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:

SECTION 1: The foregoing "WHEREAS" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Ordinance upon adoption hereof.

SECTION 2: The Town Commission of the Town of Hillsboro Beach hereby amends Chapter 6-1/2, entitled "LAND USE AND DEVELOPMENT," of the Town of Hillsboro Beach Code of Ordinances by creating Article 6-1/2-31, to be entitled "Quasi-Judicial Proceedings", as follows:

Article 6 1/2-31. QUASI-JUDICIAL PROCEEDINGS

(A). Intent

It is the intent of the Town to provide an equitable and efficient manner for the Town to hear matters which are considered quasi-judicial in nature. Notwithstanding other provisions of the Town's Code of Ordinances, sections "A" through "D" set forth the Town's procedures to be utilized for quasi-judicial proceedings. These procedures shall be utilized by the Town Commission and all Town Boards in regards to hearings on quasi-judicial matters in which their body is the final authority.

(B). Definitions.

As used in this Article, the terms listed below shall be defined as follows:

(1) Affected Person means a person (or persons), natural or corporate, who is the owners of the subject property or who owns property within

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four hundred (400) feet of the subject property as listed in the records of the County property appraiser, or who resides in or operates a business within four hundred (400) feet of the subject property.

(2) Board means any Board, Committee or Commission as defined by Article III of the Town's Code of Ordinances, including the Board of Zoning Appeals, as provided by Article XIV Section 12-280 of the Town's Code of Ordinances.

(3) Town or Town Commission means the Town Commission of the Town of Hillsboro Beach, Florida.

(4) Local Public Official means any elected or appointed public official holding a Town office who recommends to take quasi-judicial action as a member of a Board or Commission.

(5) Party or Parties means the petitioner, Town, and any Affected Person who has requested to be heard at the proceeding.

(6) Quasi-Judicial in Nature means the application of a general rule or policy to specific individuals, interests, or activities.

(7) Quasi-Judicial Proceeding means hearing held by the Board of Zoning Appeals or the Town Commission to adjudicate private rights of a particular person after a hearing which comports with due process requirements, and makes findings of fact and conclusions of law on the issue.

(8) Site Specific means an individual piece of real estate which can be clearly defined by street address, legal description or similar means at a single identifiable location.

(C). Quasi-Judicial Matters

(1) For the purpose of this article, the following matters, regardless of whether the final determination is made by the Town Commission or a Board of Zoning Appeals, shall be considered to be quasi-judicial:

- (a) Site specific rezonings and site plans;
- (b) Site specific land use amendments;

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(c) Variances, including, but not limited to, trees, signs, setbacks, distance requirements between buildings or other variances permitted by the Town Code.

(d) Plat approvals;

(e) Special Exceptions which relate to the use of land and business.

(D). Procedures for Quasi-Judicial Proceedings

(1) Ex parte (oral) communications.

Ex parte communications are not presumed prejudicial provided any disclosure required in subsections (a), (b), or (c) below is made before or during the public meeting at which a vote is taken on the matter.

(a) The substance of any ex parte communication with a local public official that 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.

(b) 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.

(c) Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activity 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.

(d) Notwithstanding the provisions of this section above, in quasi-judicial proceedings on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communications prohibitions. Disclosure of such

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communications by a member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body. All decisions of the decision-making body must be supported by substantial, competent evidence in the record pertinent to the proceedings, irrespective of such communications.

(2) Notification and required forms to be completed by affected person(s), the petitioner and the Town.

(a) At least ten (10) calendar days prior to the proceeding, Town shall provide a legal advertisement to be published in a newspaper of general paid circulation in Broward County and of general interest and readership in the community, not one of limited subject matter. Said notice shall state the name of the petitioner for the requested action, the date, time and location of the proceeding, and the location and times where and when the petition and any back-up information may be reviewed. In addition, the notice shall inform all affected persons that they will be allowed to present evidence at the hearing, bring forth witnesses, and cross-examine witnesses provided they notify and file the required forms provided by the Town clerk's office, the substance of which is described in subsection (d), below, at least five (5) calendar days prior to the proceeding.

(b) No later than fourteen (14) calendar days prior to the proceeding, a mail notice containing the same information as the legal advertisement shall be sent to each real property owner within four hundred (400) feet of the subject property as each is listed in the records of the county property appraiser. Mail notice may be provided by bulk mail, first class mail, or certified mail, return receipt requested.

(c) All cost for notification shall be paid by the petitioner. Notification costs expended by the Town Clerk's Office and reimbursed by the petitioner shall go directly back to the Town Clerk's Office. Funding and reimbursement costs shall be evaluated on a project-specific basis.

(d) Any affected person desiring to testify, present evidence, bring forth witnesses, or cross-examine witnesses at the

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proceeding shall complete the required forms provided by the Town clerk's office which forms shall at a minimum (1) set forth the affected persons name, address and telephone number which shall serve as notice to the petitioner and the Town of the affected person's intent to appear at the proceeding to testify, present evidence, bring forth witnesses, or cross-examine witnesses; (2) set forth the names, addresses and telephone number of all witnesses including consultants or experts to testify on their behalf; (3) provide copies of all documents, correspondence, memoranda or other evidence the affected person intends to present, use or make reference to during the proceeding; (4) indicate whether the affected person is for or against the petition; and (5) indicate how the affected person qualifies as an affected person. The required form must be completed and returned to the Town clerk's office at least five (5) calendar days before the proceeding.

(e) The petitioner and the Town shall also complete the required forms, provided by the Town Clerk's office, described in subsection (d) above. The completed form shall be returned to the Town Clerk's office within the time set forth in subsection (d) above.

(3) Presentation of evidence.

(a) All persons testifying before the Board of Zoning Appeals or the Town Commission must be sworn in. The petitioner, members of a Board of Zoning Appeals or the Town Commission and any affected person who has provided notice that it intends to appear at the proceeding shall be given the opportunity to present evidence, bring forth witnesses, and cross-examine any witnesses.

(b) All evidence relied upon by reasonably prudent persons in the conduct of their business shall be admissible, whether or not such evidence would be admissible in a court of law. However, immaterial or unduly repetitious evidence shall be excluded.

(c) 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.

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(d) Documentary evidence may be presented in the form of a copy or the original, if available. Upon request, parties shall be given an opportunity to compare the copy with the original.

(e) A party shall be entitled to conduct cross-examination when testimony is provided or documents are made a part of the record.

(f) The office of the Town Attorney shall represent the Board of Zoning Appeals or the Town Commission. Any questions as to the propriety and admissibility of evidence shall be presented to the Town Attorney's Office in a timely fashion.

(4) Quasi-Judicial Proceeding Procedure

The proceedings shall be conducted in an informal manner. Each party shall have the right to do the following:

(a) To call and examine witnesses;

(b) To introduce exhibits;

(c) To cross-examine opposing witnesses on any relevant matter; and

(d) To rebut evidence.

(5) Conduct of Quasi-Judicial Proceedings

To the extent possible, the following shall be the order of the proceedings:

(a) Call the proceeding to order and announce the beginning of the proceeding. All members of the Board of Zoning Appeals or Town Commission must be continuously present during the proceeding.

(b) The matter to be heard and the rules concerning the admissibility of evidence should be announced.

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(c) Statements of counsel shall only be considered as argument and not be considered as testimony. Counsel for parties shall not be subject to cross-examination. The Board of Zoning Appeals or the Town Commission shall have the authority to refuse to hear any testimony which is irrelevant or repetitive.

(d) The chairman of the Board of Zoning Appeals or the Town Commission shall have the option of determining the order of presentation of the parties in order to expedite the proceeding. During its presentation the Town shall present any staff, board or other reports on the matter as well as any comments. These reports shall include, but not be limited to, a description of the request of the petitioner; an analysis which includes the consistency with the Town's Comprehensive Plan, if applicable, and whether the petition does or does not meet the requirements of the Town Code; a listing of the exhibits to be presented; a listing of potential witnesses; a summary of the issues; and the staff and board(s) recommendations. These reports shall include specific findings in support of justifying a recommendation for approval or denial of the petition.

(e) Petitioner, or his or her representative, may make a presentation. If the petitioner chooses to make a presentation it should include a description of the nature of the petition if there is additional information that has not been previously provided to or by the Town. In addition, the petitioner shall introduce any exhibits and witnesses.

(f) Parties who are in support of the petition shall make their presentation. The parties shall introduce any exhibits and witnesses.

(g) Parties who are in opposition to the petition shall make their presentation. The party shall introduce any exhibits and witnesses.

(h) Town personnel in attendance shall provide responses to any party to the proceeding.

(i) After each witness testifies or documents are made a part of the record, a party shall be permitted to question the witness. The

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questioning party is not permitted to make any statements, only to ask questions which are directly related to the testimony presented.

(j) Final presentation by the petitioner in response to any testimony from other parties.

(k) Final presentation by the Town in response to any testimony from other parties.

(l) The Board or the Town Commission shall deliberate on the petition. No further testimony shall be taken and the members of the Board or the Town Commission shall not ask further questions of persons presenting testimony. The Board or the Town Commission shall discuss the evidence that was presented at the proceeding and vote on the petition.

(6) Final Determination by the Board or Town Commission.

In reaching a determination as whether to grant or deny the petition, the Board or Town Commission shall:

(a) Consider whether the petitioner's request is consistent with the Town's Comprehensive Plan, if applicable, and

(b) State with specificity the reasons for the approval or denial of the petition. Said approval or denial may by reference incorporate the staff, board or other reports.

(c) State whether or not the order is to be recorded in the public records of Broward County, and if applicable, that the cost of recording shall be paid by the petitioner.

(7) Preparation of the Order

The Town Attorney's Office shall prepare the final order of the Board of Zoning Appeals or Town Commission based upon the determination. The final order shall include, but not be limited to, the finding of facts, any conditions, requirements or limitations on the approval of the petition. The order shall be recorded in the Broward County Public Records. If an ordinance is required to be adopted upon approval of an

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action by the Town Commission, a final order will not be needed unless the petition is denied.

(8) Continuances and Deferrals.

If, in the opinion of the Board of Zoning Appeals or Town Commission, any testimony or documentary evidence or information presented at the proceeding justifies providing additional time to allow additional research or review in order to properly determine the issue presented, the Board or Town Commission shall continue the case to a designated time to allow for the additional research or review. After the decision is made to continue, the date to which the proceeding shall be continued shall be announced at the proceeding. All funds expended by the Town Clerk's Office pursuant to this section and reimbursed by the Petitioner shall be directed by to the Town Clerk's Office.

(9) Transcription of Quasi-Judicial Proceedings

The official transcript of a proceeding shall be preserved by tape recording or other device by the Town Clerk's office. Nothing precludes any party from providing a court reporter for the proceeding.

(10) Maintenance of Evidence and Other Documents.

The office of the Town Clerk shall retain all of the evidence and documents presented at the proceeding, except for large scale exhibits which shall be retained by the Town Clerk her or his designee, all which become a part of the public record of the proceeding.

(11) Appeal of Final Determination by Board or Town Commission.

The final determination of the Board of Zoning Appeals or Town Commission is subject to judicial review in a court of competent jurisdiction.

SECTION 3: It is the intention of the Town Commission of the Town of Hillsboro Beach that the provisions of this Ordinance shall become and be made a part of the Code of

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Ordinances of the Town of Hillsboro Beach, Florida, and that the Sections of this Ordinance may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article" or such other word or phrase in order to accomplish such intention.

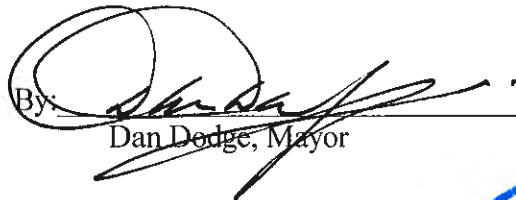
SECTION 4: All Ordinances or parts of Ordinances, Resolutions or parts of Resolutions in conflict herewith are hereby repealed to the extent of such conflict.


SECTION 5: If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given affect without the invalid provision or application, and to this end the provisions of this ordinance are to be severable.

SECTION 6: This Ordinance shall become effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, ON FIRST READING, THIS 1st DAY OF March, 2011.

PASSED ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, ON SECOND AND FINAL READING, THIS 5TH DAY OF April, 2011.

By: 
Dan Dodge, Mayor

ATTEST:
By: 
Jean-Marie Mark, Town Clerk



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