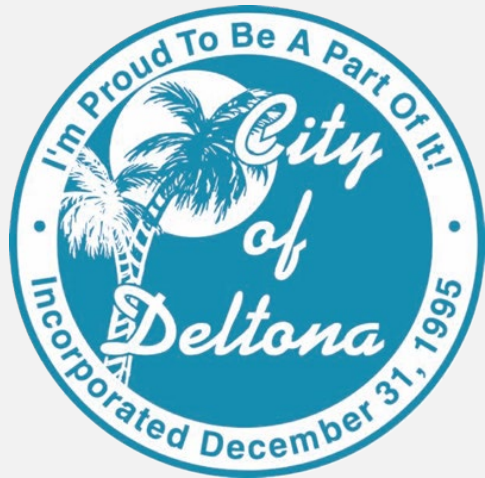


CONDUCT OF HEARINGS ON LAND USE MATTERS

PREPARED FOR
THE CITY OF DELTONA, FLORIDA
BY TG LAW PLLC



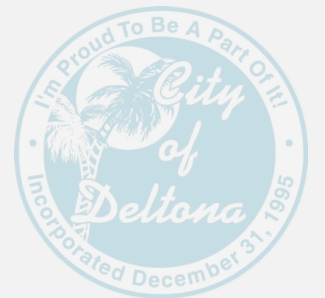


AGENDA

- ❖ Legislative Matters
- ❖ Quasi-Judicial Matters
- ❖ Ex Parte Communications and Quasi-Judicial Bias
- ❖ Findings of Fact
- ❖ Best Practices

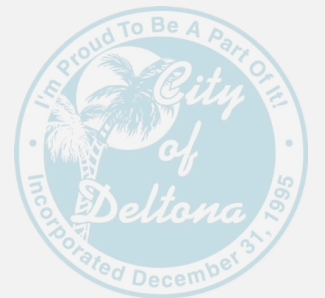
LEGISLATIVE MATTERS

- **Legislative Matters involve setting POLICY**
- Adopting or amending the Comprehensive Plan
- Adopting or amending Land Development Regulations



LEGISLATIVE HEARINGS

- Broad/general notice
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Board Members as policy-makers

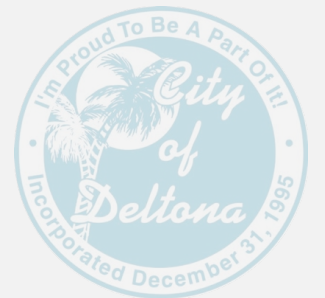


REVIEW OF LEGISLATIVE DECISIONS

- “Fairly Debatable” Standard of Review
- There must be a reasonable basis to support the action
- Upon review, a Court:
 - may not second guess the wisdom of the local government’s action; and
 - must affirm if there is any reasonable basis for the decision and that there are no constitutional violations

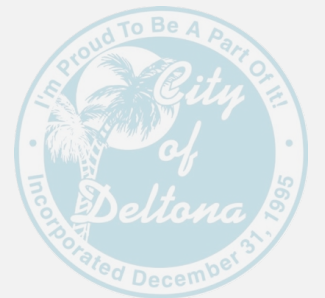
REVIEW OF LEGISLATIVE DECISIONS

- Legislative findings may be based on rational speculation unsupported by evidence or empirical data
- Can legislate as an experiment, with no proof of efficacy
- If the decision is challenged, the City has the opportunity to create additional evidence to support it – additional studies, expert testimony, etc.
- *Membreno v. City of Hialeah*, 188 So.3d 13 (Fla.3rd DCA 2016)



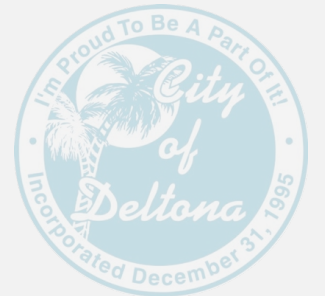
QUASI-JUDICIAL MATTERS

- Application of the general policies and rules (the City Code or the Comprehensive Plan) to specific properties
- Cannot create new policies to govern the decision without first going through a legislative process
- Examples: Rezoning, Conditional Uses, Variances, Special Exceptions,



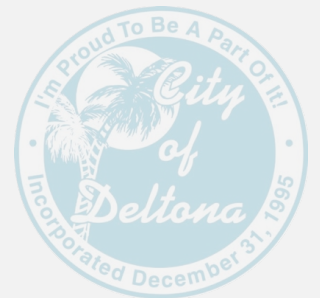
QUASI-JUDICIAL HEARINGS

- Notice to owner and affected persons – entitled to participation because of their uniquely impacted rights
- Two key elements:
 - the finding of facts regarding the specific proposal
 - the exercise of judgment and discretion in applying adopted policies to the specific situation
- Board acts as “judges”



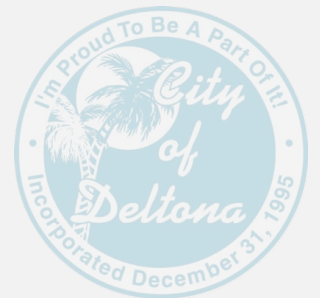
QUASI-JUDICIAL HEARINGS

- Where conflicting evidence is presented, the Board has the responsibility of deciding how much weight to accord each piece of evidence
- Continued hearings: must be present for all or must review the complete record of portions missed
- All exhibits and materials presented must be kept as part of the record
- Review is based on the record: No ability to create additional evidence after decision is made
- Board should give due consideration to the professional judgement of City Staff, but the question of what the Code/Plan means is a question of law for the Board to decide



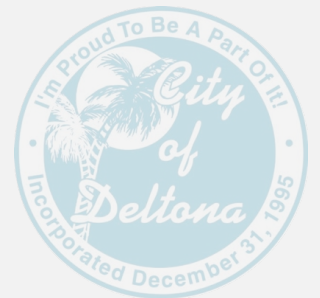
REVIEW OF QUASI-JUDICIAL DECISIONS

- Decisions by the City in a quasi-judicial capacity are subject to narrow and limited review by certiorari on the record in Circuit Court:
 - Whether procedural due process was accorded;
 - Whether the essential requirements of the law have been observed; and
 - Whether the decision is supported by competent substantive evidence
- Petitions for writ of certiorari must be filed within 30 days of rendition of the development order to be reviewed. It cannot be extended
- Denials must cite to the legal authority for the decision – see Section 166.033, Florida Statutes
- *Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993)



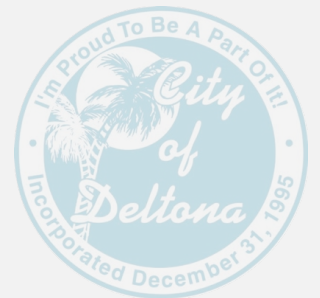
COMPETENT SUBSTANTIAL EVIDENCE

- Whether the decision is supported by competent, substantial evidence means evidence that a reasonable mind would accept as adequate to support a conclusion
- Substantial Competent Evidence from lay witnesses/residents must be “fact-based”
- Subjective preferences (“love it”/“hate it”) are not fact based and do not constitute competent, substantial evidence
- Conjecture or assumptions are irrelevant to the issues



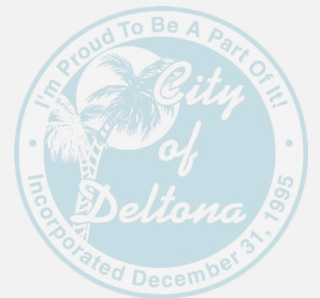
COMPETENT SUBSTANTIAL EVIDENCE - EXAMPLE

- If you want to find that property values in the neighborhood will be harmed by a proposed project, you must base your conclusion on record evidence rather than your gut
 - Testimony from an appraiser about the impacts of a similar project
 - Is it truly similar? Does the record reflect that, or are you just relying on your knowledge of the area? Need to state/show what may be obvious to local citizens, so that a reviewing court can see that evidence supports your conclusion
- Presentation of facts that would allow a reasonable person to conclude property values would go down
 - property owners testifying in detail about personal knowledge of the appraisals or sales prices or cancelled sales contracts resulting from similar development or from the pending application
- Relevant personal knowledge must be explained if it is to form the basis of your motion or vote



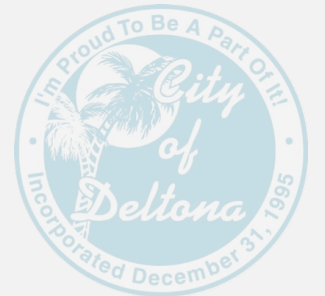
EX PARTE COMMUNICATIONS

- Communications outside hearings are presumed prejudicial and must be disclosed publicly before decision-making
- “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 subsection or by adopting an alternative process for such disclosure....”
Section 286.0115(1)(a), Florida Statutes
- When this procedure is followed, the presumption of prejudice is removed
- Disclosure is required at the time of consideration by the board



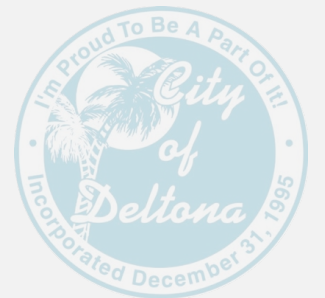
QUASI-JUDICIAL BIAS

- Bias, undisclosed ex parte communications, and close family or business ties can disqualify Board Members from participating or voting as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect impartial decision-making on the basis of the evidence presented.
- Decision-makers should not take a position on a quasi-judicial application until each party has made its presentation at the hearing.
- Board Members should not actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action to reduce risk of litigation



CASES RELATED TO QUASI-JUDICIAL BIAS

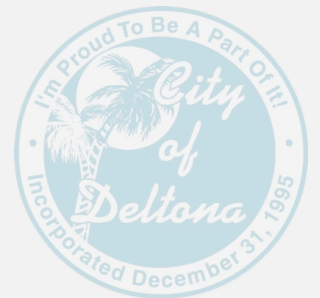
- *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (18th Cir. Ct. 1991) (denial of rezoning based on resident opposition)
- *Edelstein v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 89 (Fla. 11th Cir. Ct. April 7, 1995) (campaign promises to support a downzoning in advance of the hearing)

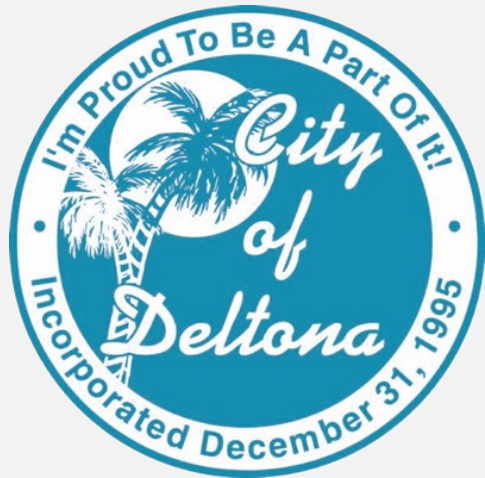


FINDINGS OF FACT

- The Florida Supreme Court in *Bd. of Cnty. Comm'rs of Brevard Co. v. Snyder*, 627 So. 2d 469, 476 (Fla. 1993) ruled that the local government “will NOT be required to make findings of fact” to support its decision on an application for rezoning
- However, written findings of fact can aid in case of appeal to support the local government’s quasi-judicial decisions

* NOTE – HB 399 takes effect January 1, 2027, and impacts denials; requiring certain findings be issued





BEST PRACTICES

- ❖ Be an objective decisionmaker
- ❖ Make decisions based on the information presented
- ❖ Be an effective and prepared Board Member
- ❖ Make sound decisions and defensible motions
- ❖ Added conditions should be rational and not overlap or conflict with staff