

**Town of Surfside**  
**Commission Quasi-judicial & Committee Workshop**  
**May 5, 2010 - 7:00 pm**  
**Commission Chambers - 9293 Harding Ave, 2<sup>nd</sup> Fl**  
**Surfside, FL 33154**

**MINUTES**

**1. Opening**

**A. Call to Order**

Mayor Daniel Dietch called the meeting to order at 7 p.m.

**B. Roll Call of Members**

Town Clerk, Debra Eastman called the roll with Commissioner Michael Karukin, Commissioner Edward Kopelman, Vice Mayor Joe Graubart and Mayor Daniel Dietch in attendance. Commissioner Marta Olchyk was absent.

**C. Pledge of Allegiance**

Town Clerk, Debra Eastman led the pledge of allegiance.

**D. Public Comments**

There were no public comments.

- 2. Quasi-judicial vs. Legislative Process – Lynn Dannheisser, Town Attorney**  
Town Attorney, Lynn Dannheisser gave a presentation regarding quasi-judicial procedures (attachment A). Mayor Daniel Dietch thanked the Town Attorney for her presentation and called for a brief break at 7:53 p.m. The meeting resumed at 8 p.m.

**3. Committees**

**A. Value of Current Committees**

Mayor Daniel Dietch suggested that the current committees be reviewed, suggested preparation for the possible enactment of a Community Development Committee and also consideration to reinstitute the Education Committee. Mayor Daniel Dietch offered to frame out the Community Development Committee and report back to the Commission. Mayor Dietch suggested retaining the two resident members of the Pension Board.

**B. Committee Rules and Procedures**

**C. Potential Changes to Committees/Boards**

After discussion regarding the current committees and members, the Commission requested that the Town Clerk contact the current committee members as to their willingness to continue to serve.

**D. Committees/Boards Staff Support**

Mayor Daniel Dietch reminded that the Commission needs to be mindful of the cost of staff in terms of committees and the support that is required. Mayor Dietch asked

for volunteers as a liaison to committees. The Commissioners volunteered as follows: Commissioner Michael Karukin liaison to Tourist Board, Commissioner Edward Kopelman liaison to Parks and Recreation, Mayor Daniel Dietch to Personnel Appeals Board, Vice Mayor Joe Graubart offered to work with schools as a liaison.

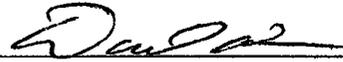
**E. Resolution – Appointment of Members to P&Z Board**

Mayor Daniel Dietch reminded the Commission that the appointment of members to the Planning and Zoning Board and Design Review Board will be on the agenda for the May Regular Commission Meeting.

Mayor Daniel Dietch explained the upcoming Team Building session and the two part process of individual interviews and the group session.

**4. Adjournment** The meeting adjourned at 9:35 p.m.

Accepted this 8 day of June, 2010.



Daniel Dietch, Mayor

Attest:



Debra E. Eastman, MMC

Town Clerk

**Town of Surfside**

**TOWN COMMISSION**  
**Workshop – Quasi-Judicial**  
**Procedures**

**May 5, 2010**



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**Town Planning and Zoning Board**

- Created by Town Code
- Designated Local Planning Agency (LPA) by Florida Statutes Section 163.3174
- Oversees Comprehensive Plan & Recommends Growth Management Policies

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**Town Commission**

- Ensure Zoning Code is **CONSISTENT** with Comprehensive Plan
- Implement Land Development or Zoning Code Thru Approval or Recommendation of Development Orders Consistent with the Comprehensive Plan (Variances, Conditional Uses, Site Plan Approvals, etc.)

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**Comprehensive Plan**

- Preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement, fire prevention and general welfare.
- Contains Goals, Objectives, and Policies.
- Contains Supporting Data and Analysis.
- Growth Management's "Constitution."

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**Comprehensive Plan Elements**

- Future Land Use
- Traffic Circulation
- Sanitary Sewer, Solid Waste, Drainage, Potable Water & Natural Groundwater Recharge
- Conservation
- Recreation & Open Space
- Housing
- Coastal Management
- Capital Improvements
- Public School Facilities
- Intergovernmental Coordination

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**Land Development Code**

LCD or Zoning Code is the Town's zoning and land use ordinances (laws)

All changes to the Land Development Code require review and comment by the Local Planning Agency.

All changes to the Land Development Code are enacted by ordinance, after advertising by the Town Clerk and the conduct of two public hearings by the Town of Surfside Commission.

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**Land Development Orders**

- Land Development Orders are final approvals or permits and shall be **CONSISTENT** with the adopted comprehensive plan.

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**CONSISTENCY: Internal and External**

- The Comprehensive Plan must be internally consistent.
- The Land Development Code must be consistent with the Comprehensive Plan.
- Development Orders must be consistent with the Land Development Code and Comprehensive Plan.

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***The Decision***

Legislative  
or  
Quasi-judicial

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**Legislative- It is legislative if the action:**

- Sets policy (and is not a specific approval on a specific site)
- Affects the Town at large (not just a single property or its immediate surrounding area)
- Examples:
  - Adopting or amending the Comprehensive Plan
  - Adopting or amending Land Development Regulations (zoning regulations)

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**In order to uphold the Legislative Decision of the Commission, courts ask: Is the decision "Fairly Debatable?"**

- There must be a reasonable basis to support the action
- The fairly debatable standard is a very deferential standard
- If there is any health safety or welfare issue being addressed by the action it will be fairly debatable thus the "Whereas" clauses in proposed ordinance and report

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**Judicial Review of Legislative Decisions**

A Court cannot and will not second guess the wisdom of the legislative body's policy choice and will affirm if there is supporting evidence in the record.

Examples: creating height or other zoning restriction, imposing impact fees if they are assessed fairly and equitably, creating districts for commercial vs. residential uses

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### Exceptions

- When there is a constitutional right that must be protected such as free speech (i.e. Town must provide a zone for adult entertainment establishments- cannot ban altogether) or freedom of religion (town must allow places of public assembly and worship subject to reasonable zoning regulations)
- There, the courts will impose their judgment and not to defer necessarily to the local government

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### Quasi-Judicial Decision-Making

These are decisions that:

- Execute, Apply, or Implement Legislative (Policy) Decisions
- Affect Individual Parcels; are not decisions of general application
- Examples:
  - Re-zonings, variance requests, approvals of plats, conditional uses, issuance of building permits, site plan approvals.

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### The Quasi-Judicial Decision on Appeal: Three Questions a Court Considers

- Were the parties afforded procedural due process in the quasi-judicial decision?
- Did the quasi-judicial body observe the essential requirements of law?
- Did the quasi-judicial body base its decision on competent and substantial evidence?
- Question is NOT whether the decision was fairly debatable.

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**Quasi-Judicial Hearing must demonstrate certain Basic Legal Requirements were met**

- Notice
- Hearing Before a Neutral Decision Maker
- Presentation of Evidence by the Petitioner
- Sworn Testimony
- Questioning of Witnesses was allowed
- Witnesses were Provided an Opportunity to Speak
- Criteria was applied
- Record was kept

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**Quasi-Judicial Hearing Basic Hearing Decorum**

- The Petitioner and Witnesses Should be Treated With Respect and Dignity.
- The Petitioner and Witnesses SHOULD NOT be Interrupted During their Comments/Presentation.
- Written Testimony, Media, or Electronic Evidence Must be Accepted Into the Record and May be Summarized During the Presentation.
- Town Attorney may assert some control to ensure due process

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**Quasi-Judicial Hearing Basic Hearing Decorum**

- All Requests to Speak Should be with Permission of the Chair
- Argumentative Exchanges Between Board Members, Staff, the Petitioner and/or Witnesses is Prohibited.
- Board Members Should not Interrupt One Another Nor Address Witnesses, the Petitioner or Staff, When Being Questioned by Another Board Member Unless Permitted by the Chair

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**Quasi-Judicial Hearing**

- All ex parte communication must be disclosed in the hearing process
- What is Ex Parte Communication?
  - Occurs outside the public hearing
  - One sided (opposition or support) talks to impartial decision maker
  - The other side does not have an opportunity to respond
  - Can be in any form - written, verbal, electronic, etc.
- Opponents must have an opportunity to respond

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**The Quasi-Judicial Decision**

**MUST BE BASED ON:**

**"Competent and Substantial Evidence"**

Evidence a reasonable mind would accept as adequate to support a conclusion

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**Quasi-Judicial Decision:  
Substantial Competent Evidence**

- Official Town records (charter, codes, ordinances)
- Expert testimony
- Application materials submitted by the applicant
- All staff reports

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**Quasi-Judicial Decision:  
Substantial Competent Evidence**

- Actions previously taken by other reviewing boards
- Pictures, photographs if authenticated
- Fact Based Citizen Testimony
  - Substantial Competent Evidence from lay witnesses – Citizens – must be "fact based"
  - Subjective preferences are not fact based and do not constitute Substantial Competent Evidence

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**Appellate Review**

- Most Planning and Zoning Board decisions are only recommendations
- Town Commission decisions are final

If only a RECOMMENDATION, another quasi-judicial hearing will be conducted by the Town Commission who will make a final decision. A final decision by the Town Commission is appealed to the circuit court.

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**Questions?**

**THE END**

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