

RESOLUTION 20-2008

A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 2, ARTICLE II, TOWN COUNCIL, ADDING PROCEDURES FOR QUASI-JUDICIAL PROCEEDINGS; PROVIDING FOR CODIFICATION; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Council recognized the need for established procedures relating to quasi-judicial hearings; and

WHEREAS, the Town Attorney has drafted such procedures for Council to use when dealing with such issues and for use by the Board of Adjustment; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, that:

SECTION 1. Amendment to Code.

Section 2-26 shall be amended to read as follows:

“Section 2-26. Quasi-Judicial Procedures.

I. NATURE OF QUASI-JUDICIAL HEARINGS

Certain standards of basic fairness must be provided in quasi-judicial proceedings. A quasi-judicial hearing meets due process requirements if the parties are provided notice of the hearing and a fair opportunity to be heard in person or through counsel, the right to present evidence and cross-examine witnesses and the right to be informed of all the facts upon which the Board acts.

II. ORDER OF PROCEEDINGS

1. Florida law does not require that witnesses be sworn in at a quasi-judicial hearing. The Board may want to have the witnesses sworn. If it chooses to do so then the Chair directs Clerk or attorney to swear in witnesses en masse.
 - a. Clerk or attorney has all witnesses stand and swear to the following: “do you swear and affirm that the testimony you will give before the Board or Council will be the truth, the whole truth and nothing but the truth so help you God?” Clerk or attorney announces witnesses have been sworn.
 - b. The Chair announces that anyone testifying before the Board or Council needs to state their name and address for the record.
2. The Chair should announce that any person desiring to present written documentation, photographs, or other documentary evidence must give a copy of the documents to the Clerk and may provide the Board members a copy as well.

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3. Chair announces that all ex parte communications and any pre hearing site visitations must be disclosed. Such disclosure shall include the date of the communication and/or site visit, whom the communication and/or site visit was with, and a summary of the communication and /or site visit.
4. Petitioner's presentation:
 - a. Petitioner or Petitioner's representative may make an opening statement by presenting its position, introducing documentation or other evidence.
 - b. Petitioner may then call witnesses.
 - c. Any person desiring to cross-examine Petitioner's witnesses may do so.
5. Testimony and presentation of evidence by the public, either in support or against the Petitioner.
 - a. Time limit for such presentations by the public shall be (Board or Council to set time limits)_____ minutes.
 - b. If there is an authorized representative of a group of citizens or public (i.e. a representative of a homeowner's association, condominium association or other type of property association) then that person would be given (Board or Council to set time limits)____ minutes to present its case on behalf of the property owner's association. Unless there is different testimony to be presented by a member of the same association, no other person within the property owner's association will be permitted to testify. The Board or Council has the discretion to enlarge any time limitations.
 - c. Cross-examination of any person of the public who has given testimony.
6. Staff's presentation:
 - a. Staff may make an opening statement.
 - b. Staff may call witnesses and present evidence.
 - c. Staff may be cross-examined by any person. Once the evidence has been presented, the Chair shall close the public hearing and bring the matter back to the Board or Council for any additional questions they may have of any person who participated in the public hearing. However, no discussion amongst the Board or Council members shall be made unless and until a motion and a second have been made.

III. BOARD OR COUNCIL DISCUSSES AND VOTES.

1. When a decision is made by a body that has final decision making authority, the Town Attorney shall prepare a written order to be signed by the chairperson and such order shall become final when filed with the Clerk.

SECTION 2. Codification.

The Clerk is directed to have this codified into the Malabar Code of Ordinances.

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SECTION 3. Conflict.

All resolutions or parts of resolutions in conflict herewith are hereby repealed.

SECTION 3. Effective Date. This Resolution shall take effect immediately upon its adoption.

This Resolution was moved for adoption by Council Member _____. This motion was seconded by Council Member _____ and, upon being put to vote, the vote was as follows:

Council Member Nancy Borton	_____
Council Member Brian Vail	_____
Council Member Charles (Chuck) McClelland	_____
Council Member Jeffrey (Jeff) McKnight	_____
Council Member Patricia D. Dezman	_____

This Resolution was then declared to be duly passed and adopted this ^h day of _____, 2008.

By: TOWN OF MALABAR

Mayor Thomas M. Eschenberg
Town of Malabar

Approved for Legal Sufficiency:

Karl Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin
Town Clerk/Treasurer

(seal)

Note: This was tabled at the May 5, 2008 in order to get more information. dkf