



Planning Department of
Nassau County
96161 Nassau Place
Yulee, Florida 32097

APPLICATION AND INSTRUCTIONS FOR REZONING

NOTICE: Florida Statutes and the Courts of Florida require that all Rezoning applications be heard as a Quasi-Judicial hearing. Procedures for Quasi-Judicial hearings are attached.

1. Pursuant to Ch. 125.22, Florida Statutes, within 30 days after receiving the application, the County must review the application for completeness and issue a letter indicating that all required information is submitted or specifying any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information.
2. The Planning and Zoning Board and the Board of County Commissioners will conduct public hearings for this application.
3. The required hearings will require due public notice of this application. A legal advertisement must be published in the newspaper; notices are to be mailed to adjacent property owners within 300 feet of the subject property, and a sign will be posted on the property.
4. Procedures for Quasi-Judicial hearings will require the following:
 - a. That staff, applicants, and/or applicant representatives be sworn in to present testimony;
 - b. That witnesses be allowed the right to present evidence into the record;
 - c. That those persons presenting evidence and those opposed to the application have the right to be cross-examined; and,
 - d. That the testimony and evidence address the criteria defined in the Land Development Code that is applicable to the rezoning of real property.
5. The Planning Department of Nassau County will prepare a staff report for the Planning and Zoning Board and for the applicant. This report will be available when the agenda for the Planning & Zoning Board meeting is published on the County's website: www.nassaucountyfl.com.
6. If you have any questions about procedures or the review criteria for this application, please consult with the Planning Department of Nassau County at (904) 530-6300 or planninginfo@nassaucountyfl.com prior to the Planning and Zoning Board meeting.

INSTRUCTIONS FOR COMPLETING THE APPLICATION:

It is essential that all the information provided is accurate. Incorrect information can delay or nullify the application process. Use the forms that are available for download at www.nassaucountyfl.com under Departments/ Planning Department / Downloadable Application Forms.

- (1) **Name and Address of the Owner:** Provide the name and address of the property owners. The owner's name should agree with the recorded deed in the public records of Nassau County.
- (2) **Name and Address of the Applicant / Authorized Agent:** Provide the name and address of the applicant or authorized agent for this application, if applicable. Please note that if the applicant is not the owner, this application must be accompanied by completed Owner's Authorization for Agent form.
- (3) **Location:** Fill in the street location by indicating the property location by side (north, south, east or west) of the street and the nearest intersecting streets (for example: west side of Amelia Road, between Magnolia Street and Amelia Lane). If a street address has been assigned to this property, include such number. If it is impractical to describe the street location by intersecting streets, indicate the approximate distance to the nearest intersecting street (for example: west side of Blackrock Road, CR 107, 1/2 mile north of A1A).
- (4) **Parcel Identification Numbers:** The Parcel Identification Number is an eighteen (18) digit number defining the subject property. This number is located at the Property Appraiser's website at www.nassauflpa.com.
- (5) **Current Zoning District:** Provide the current zoning district of the subject property. The official zoning map is available at www.nassauflpa.com under *Map Layers*. **Current Future Land Use Map Designation:** Provide the current future land use designation of the subject property. The official future land use map is available at www.nassauflpa.com under *Map Layers*. Names and abbreviations of FLUM designations are included in the table following these instructions.
- (6) **Proposed Zoning District:** Provide the proposed zoning district for the subject property. It is suggested that you discuss the proposed use with the Planning Department to be sure that the zoning district requested will permit the type of use desired. Although the Planning Department will provide assistance, the district requested in the application is entirely up to the applicant. Failure to request the proper designation will not be the responsibility of Nassau County. Amending the application after due public notice has been posted will require re-advertising of the application at the applicant's expense. Names and abbreviations of FLUM designations are included in the table following these instructions.
- (7) **Future Land Use Map Designation:** Provide the current (or proposed) future land use designation of the subject property. The official future land use map is available at www.nassauflpa.com under *Map Layers*.
- (8) **Area (acres):** Provide the area, to the nearest tenth of an acre, of the subject property.
- (9) **Current Use:** List any improvements or uses currently on the site of the subject property.
- (10) **Water Supply:** Indicate whether the subject property is to be served by private or public water systems.
- (11) **Wastewater Treatment:** Indicate whether the subject property is to be served by private or public water systems.
- (12) **Review Criteria for Rezoning:** All rezoning applications shall provide justification for the proposed rezoning. In evaluating proposed rezoning, the County shall consider each of the criteria listed in this section. pursuant to Section 5.02 of the County's Land Development Code (Ord. 97-19). Please attach a response to all of the criteria using 8½" x 11" size paper with the answers typed or printed legibly and identifying the question on the application. If you have any questions about the review criteria for this application, please consult with the Planning Department of Nassau County prior to submitting the application.

INSTRUCTIONS FOR COMPLETING THE APPLICATION:

- (13) Required Attachments:** The following forms and other attachments are required to be submitted with this application:
- (a) *Location Map:*** Provide a location map of the subject property. Location and parcel maps are available at www.nassauflpa.com.
 - (b) *Legal Description:*** Provide a Microsoft Word or other text file of the metes and bounds description of the boundaries of the property is required. This will be incorporated into the adopted ordinance if the application is approved. The legal description of the subject property is shown on the deed and the survey. If the property is in a recorded subdivision, use the lot and block number. If the property is not in a recorded subdivision, use the metes and bounds description as shown on the deed or survey. A reference to the section, township, range, or deed book is not sufficient. For this requirement.
 - (c) *Survey:*** An updated survey of the subject property is required. The survey must be prepared by a professional surveyor licensed in the State of Florida.
 - (d) *Environmental Assessment (for applications 10 acres or more):*** The assessment may employ aerial photographs; land use and cover classifications per Florida Land Use Classification Codes (FNAI.org/gisdata.cfm); wetlands identified by the National Wetlands Inventory, SJRWMD (SJRWMD.com/gisdevelopment) or ground truthing; wildlife corridors and strategic habitat conservation areas identified by the Florida Fish and Wildlife Conservation Commission's Florida Natural Areas Inventory and Florida Department of Environmental Protection supplemented, as appropriate, by field surveys.
 - (e) *School Impact Analysis Form (for applications to residential districts only):*** This form must be submitted with the application and will be forwarded to the Nassau County School Board for a determination on available capacity in affected public school facilities. (NOTE: Requirements for school concurrency must be addressed prior to public hearings for an application. Contact the Planning Department for details).
 - (f) *Transportation Impact Analysis (if requested by the Department):*** A Transportation Impact Analysis (**tia**), i.e. traffic study to assess the adequacy of existing and proposed transportation facilities and impact to the mobility network. The Transportation Impact Analysis (traffic study) should be prepared according to the adopted Nassau County Transportation Impact Analysis Guidelines and submitted with the application.
 - 1. The TIA should be prepared, signed and sealed by a qualified engineering or transportation planning professional.
 - 2. The TIA should evaluate the impacts of the specific uses proposed in the application or based on the highest density or intensity of the use allowed in the proposed FLUM designation.
 - 3. The TIA should include conclusions and recommendations for on-site or off-site transportation improvements based on analysis of the existing mobility network, future traffic projections, project trip generation, project trip distribution and peak-hour Level of Service (LOS) analysis as specified in the adopted Nassau County Transportation Impact Analysis Guidelines.
 - (g) *Owners Authorization for Agent Form:*** If the applicant is not the owner, this application must be accompanied by completed Owner's Authorization for Agent form. A copy of this form is attached to this application. Please ensure it is filled out completely, signed and notarized.
 - (h) *Consent for Inspection Form:*** This form is necessary for the County to obtain consent for the inspection of the subject property and the posting of public notice by the Planning Department of Nassau County in conjunction with the application. A copy of this form is attached to this application. Please ensure it is filled out completely, signed and notarized.

(14) Additional Attachments for Planned Unit Developments: The following attachments are required to be submitted applications for rezoning to Planned Unit Development (PUD):

- (a) Preliminary Development Plan:** Provide a graphic preliminary development plan for the PUD as specified in Article 25 of the County's Land Development Code (Ord. 97-19).
- (b) PUD Written Description/Conditions:** Provide a written description of the proposed PUD and conditions for development. as specified in Article 25 of the County's Land Development Code (Ord. 97-19).
- (c) Proposed Deed Restrictions and Association Bylaws:** Provide copies of proposed deed restrictions and homeowner/property owner association bylaws as specified in Article 25 of the County's Land Development Code (Ord. 97-19).

(15) Signatures: Please ensure the application is filled out completely. The application should be signed by the owner(s) and authorized agent(s), and notarized.

DUE PUBLIC NOTICE REQUIREMENTS:

Nassau County requires **due public notice** which includes a legal advertisement published in an approved newspaper of general circulation not less than fifteen (15) days in advance of the public hearing, a sign posted in a conspicuous place on or around the subject property and a public notice mailed to all property owners within 300 feet of the periphery of the subject property. The Planning Department of Nassau County will prepare the legal advertisement, the public notice and the sign.

IMPORTANT: The applicant is responsible for the payments for publication of legal advertisements. Payments must be made directly with the newspaper by the established deadline. The applicant is responsible for contacting the newspaper to obtain an invoice and payment information for advertisements submitted (This payment is separate from and is not included in the calculation of the County's application fee- see below).

IMPORTANT: The applicant should ensure that an original or scanned copy of the affidavit of proof of publication from the newspaper is received by the Planning Department of Nassau County. The public hearing cannot be held unless proof of publication is received by the Planning Department of Nassau County prior to the public hearing.

If the signs are destroyed or rendered illegible, notify the Planning Department of Nassau County immediately so that a replacement can be erected.

The applicant is not required to obtain the signatures or approval of the adjoining property owners. If you choose to present a petition of adjoining property owners favoring your application, attach a legibly printed or typed list of the names and addresses submitted on the petition.

APPLICATION FEES:

An invoice for the non-refundable application fee for a rezoning application will be sent to the applicant following submittal and review of the application. To inquire about or to confirm the fee for an application, including postage based on the number of property owners within 300 feet, please contact the Planning Department of Nassau County at (904) 530-6300 or planninginfo@nassaucountyfl.com.

Please make checks payable to: Nassau County Board of County Commissioners (Nassau County BOCC).

SUBMITTING THE APPLICATION:

Return the completed application and attachments to the Planning Department of Nassau County.

In person or by mail to:

Planning Department of Nassau County

96161 Nassau Place

Yulee, FL 32097

(offices open Monday through Friday, 8:00am until 5:00pm)

By e-mail to:

planninginfo@nassaucountyfl.com

If, for any reason, you wish to withdraw the application, you must notify the Planning Department of Nassau County, in writing, prior to the date of the public hearing.

ZONING DISTRICTS: NAMES AND ABBREVIATIONS

County-wide Conventional Zoning Districts:

Open Rural	OR
Residential, Single-family Estate	RS-E
Residential, Single-family 1	RS-1
Residential, Single-family 2	RS-2
Residential, Mixed	RM
Residential, Townhouses	RT
Residential, General 1	RG-1
Residential, General 2	RG-2
Residential, Mobile Homes	RMH
Commercial, Professional and Office	CPO
Commercial, Neighborhood	CN
Commercial, General	CG
Commercial, Intensive	CI
Commercial, Highway and Tourist	CHT
Industrial, Warehouse	IW
Industrial, Heavy	IH
Industrial Park	IP
Government/Public Use	GPU
Recreation and Open Space	ROS

ZONING DISTRICTS: NAMES AND ABBREVIATIONS

***American Beach Zoning Districts:**

Residential, Single-family 2 American Beach	RS-2AB
Residential, General 1 American Beach	RG-1AB
Commercial, Neighborhood American Beach	CN-AB
Commercial, General American Beach	CG-AB

**These designations are only available to properties within the American Beach community. Please contact the Planning Department for more details at (904) 530-6300 or planninginfo@nassaucountyfl.com*

Planned Development Zoning Districts:

Planned Unit Development	PUD
*Planned Development - East Nassau Community Planning Area	PD-ENCPA

**This designation is only applicable to properties within the adopted East Nassau Community Planning Area Sector Plan. Please contact the Planning Department for more details at (904) 530-6300 or planninginfo@nassaucountyfl.com*

William Burgess Mixed Use Activity Center Overlay District Transects:

Natural Zone	T-1
Agriculture & Open Space Zone	T-1.5
Rural Zone	T-2
Rural Transitional Zone	T-2.5
Sub-urban Zone	T-3
Urban Transitional Zone	T-3.5
Urban Edge/Urban General Zone	T-4
Urban Corridor Zone	T-4.5
Urban Center Zone	T-5

**These designations are only available to properties within the adopted William Burgess Mixed Use Activity Center Overlay District (Policy FL.02.05). Please contact the Planning Department for more details at (904) 530-6300 or planninginfo@nassaucountyfl.com*



APPLICATION FOR REZONING

Official Use Only

Zoning District: _____
 FLUM Designation: _____
 Commission District: _____
 Application #: _____
 Date Filed: _____

(1) Name and Address of the Owner:

Name: _____

Mailing address: _____

Telephone: _____

Email: _____

(2) Name and Address of the Applicant / Authorized Agent:

Name: _____

Mailing address: _____

Telephone: _____

Email: _____

(PLEASE NOTE: If applicant is not the owner, this application must be accompanied by completed Owner's Authorization for Agent form.)

(3) Location:

On the _____ side of _____
 (north, south, east, west) (street)

between _____ and _____
 (street) (street)

(4) Parcel Identification Numbers:

Please attach additional Parcel Identification numbers using 8½" x 11" size paper with the answers typed or printed legibly

(OFFICIAL USE ONLY)

Legal Advertisement deadline: ___/___/___

Newspaper for legal advertisement: ___Fernandina Beach News Leader ___Nassau County Record

PZB Hearing Date: ___/___/___ BOCC Hearing Date: ___/___/___

(5) Current Zoning District: _____

(6) Proposed Zoning District: _____

(7) Future Land Use Map Designation: _____

(8) Area (acres): _____

(9) Current Use (list any improvements on the site or uses):

(10) Water Supply:

- Private Well
- Private treatment plant
- Public Water System _____ (name of provider)

(11) Wastewater Treatment:

- On-site Sewage Treatment System
- Private Sewer Treatment Plant
- Public Sewer System _____ (name of provider)

(12) Review Criteria for Rezoning:

All rezoning applications shall provide justification for the proposed rezoning. In evaluating proposed rezoning, the County shall consider each of the following. Please attach a response to the following using 8½" x 11" size paper with the answers typed or printed legibly and identifying the question on the application.

- (A) Consistency of the proposed rezoning with the uses, densities and intensities permitted by the underlying Future Land Use Map (FLUM) designation and the goals, objectives, and policies of the adopted Comprehensive Plan.

- (B) Consistency of the proposed rezoning with the uses, densities and intensities permitted by the adjacent and surrounding zoning districts.

- (C) Consistency of the proposed rezoning with the applicable portions of small area plans, overlay districts or any current County plans or programs.

- (D) The rezoning does not result in a sprawl development pattern as determined by Chapter 163 Florida Statutes, and will not discourage infilling of more appropriate areas available for development within existing urban or transitioning areas.

- (E) The availability of, and potential impact to, public infrastructure and facilities that will serve the site in question including public water and wastewater, public roads, public schools, public parks, police and fire service and other similar items. These items may also be reviewed if an amendment to the Future Land Use Map filed is filed in conjunction with a rezoning.

- (F) Consistency of the proposed rezoning with any applicable substantive requirements of the Code, including minimum or maximum district size, access, setback and buffering requirements.
- (G) The nature and degree of potential adverse impacts the proposed rezoning could have upon permitted conforming uses on neighboring lands.
- (H) The nature and degree of potential adverse impacts the proposed rezoning could have upon environmentally sensitive lands or areas of historical or cultural significance.
- (I) Substantial changes in the character or development of areas in or near the area under consideration which affect the suitability or unsuitability of the land for its use as presently zoned.
- (J) The extent to which land use and development conditions have changed since the effective date of the existing zoning district regulations involved which are relevant to the property.
- (K) Public policies in favor of the rezoning. Examples include identified economic development or affordable housing projects, mixed-use development, or sustainable environmental features, which are consistent with specific adopted plans or policies of the Board of County Commissioners.
- (L) The extent to which the rezoning will result in a fiscally and environmentally sustainable development pattern through a balance of land uses that is internally interrelated; demonstrates a context sensitive use of land; ensures compatible development adjacent to agriculture and environmentally sensitive lands; protects environmental and cultural assets and resources; provides interconnectivity of roadways; supports the use of non-automobile modes of transportation; and appropriately addresses the infrastructure needs of the community.
- (M) The extent to which the rezoning does not propose environmental impacts that would significantly alter the natural landscape and topography such that it would exacerbate or lead to increased drainage, flooding, and stormwater issues.
- (N) The extent to which the rezoning results in a compact development form that fosters emergence of vibrant, walkable communities; makes active, healthier lifestyles easier to enjoy; conserves land; supports transportation alternatives; reduces automobile traffic congestion; lowers infrastructure costs; reduce vehicular miles traveled and costs related to household transportation and energy; and puts destinations in closer proximity. Successful compact development is illustrated through the use of:
 - (1) Clustered population and/or employment centers;
 - (2) Medium to high densities appropriate to context;
 - (3) A mix of land uses;
 - (4) Interconnected street networks;
 - (5) Innovative and flexible approaches to parking;
 - (6) Multi-modal transportation design including pedestrian, bicycle, and transit-friendly options;
 - (7) Proximity to transit.

(13) Required Attachments:

- (a)** *Location Map (see instructions)*
- (b)** *Legal description (see instructions)*
- (c)** *Survey (see instructions)*
- (d)** *Environmental Assessment (see instructions)*
- (e)** *Transportation Impact Analysis (see instructions)*
- (f)** *Owners Authorization for Agent* (form is attached to this application)*
- (g)** *Consent for Inspection Form (form is attached to this application)*

*NOTE: If prepared or signed by an agent, a notarized *Owner's Authorization for Agent* form must be provided.

(14) Additional Attachments for Planned Unit Developments (PUD):

- (a)** *Preliminary Development Plan (see instructions)*
- (b)** *PUD Written Description/Conditions (see instructions)*
- (c)** *Proposed Deed Restrictions and Association Bylaws (see instructions)*

(15) Signatures:

In filing this application, the undersigned understands it becomes a part of the official records of the Planning and Zoning Board and does hereby certify that all information contained herein is true to the best of his/her knowledge.

Signature of Owner: _____

Signature of Applicant/Agent: _____

(if different than Owner)

State of Florida

County of _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this

_____ day of _____, 20_____.

By _____

Identification verified: _____

Oath sworn: _____ Yes _____ No

Notary Signature

My Commission expires: _____



Planning Department of
 Nassau County
 96161 Nassau Place
 Yulee, Florida 32097

CONSENT FOR INSPECTION

I, _____, the owner or authorized agent for the owner of the premises located at _____ do hereby consent to the inspection of said premises and the posting of public notice by an employee of the Department of Planning & Economic Opportunity, Nassau County, Florida, in conjunction for an application pursuant to a:

- | | |
|--|--|
| <input type="checkbox"/> Rezoning/Modification | <input type="checkbox"/> Conditional Use |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Preliminary Binding Site Plan |
| <input type="checkbox"/> Plat | <input type="checkbox"/> Future Land Use Map Amendment |

without further notice.

Dated this _____ day of _____, 20____.

 Signature of Owner or Authorized Agent

 Telephone Number

State of Florida
County of _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this _____ day of _____, 20____.

By _____

Identification verified: _____

Oath sworn: _____ Yes _____ No

Notary Signature

My Commission expires: _____



Planning Department of
 Nassau County
 96161 Nassau Place
 Yulee, Florida 32097

OWNER'S AUTHORIZATION FOR AGENT

_____ is hereby authorized TO ACT ON BEHALF OF

_____, the owner(s) of those lands described within the attached application, and as described in the attached deed or other such proof of ownership as may be required, in applying to Nassau County, Florida, for an application pursuant to a:

- | | |
|--|--|
| <input type="checkbox"/> Rezoning/Modification | <input type="checkbox"/> Conditional Use |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Preliminary Binding Site Plan |
| <input type="checkbox"/> Plat | <input type="checkbox"/> Future Land Use Map Amendment |

BY: _____

Signature of Owner

 Print Name

 Signature of Owner

 Print Name

 Telephone Number

State of Florida
 County of _____

The foregoing instrument was acknowledged before me by means of ___ physical presence or ___ online notarization, this
 _____ day of _____, 20_____.

By _____

Identification verified: _____

Oath sworn: _____ Yes _____ No

 Notary Signature

My Commission expires: _____

QUASI-JUDICIAL HEARING PROCEDURES

Florida Statutes and the Courts of Florida require that your application be heard as a Quasi-Judicial Hearing. A Quasi-Judicial Hearing, by state and case law, is different than a regular hearing conducted by this Board. A Quasi-Judicial Hearing is less formal than a court hearing but similar in procedures and evidence issues. In a Quasi-Judicial Hearing, the applicant has the burden of demonstrating by competent substantial evidence that his/her application meets requirements of the County Zoning Code, Comprehensive Plan and other applicable regulations. General objections, without more specific evidence, does not constitute substantial competent evidence.

You are entitled to be represented by counsel and if you desire a continuance to obtain counsel, please come forward and make that request. The Board has the discretion to grant or deny the request. The hearing procedures will be:

1. Staff will be sworn and shall describe the applicant's (you) request, provide staff's recommendation and present any witnesses in support of staff's recommendation. Staff shall have fifteen (15) minutes.
2. The applicant (you) and others presenting evidence will be sworn and shall state their name, address and subject to which they will testify. The applicant (you) or its agent/attorney may elect to waive their presentation and to rely on the application, recommendation, and staff comments, reserving the right to address the Board if any evidence against the application is presented.
3. The applicant (you), or his/her attorney/representative, if they do not waive their presentation, will have an opportunity to present evidence for the application and will have fifteen (15) minutes for the presentation. If the applicant has witnesses, the applicant will indicate the name of each witness and the subject to be addressed. The applicant's witnesses will each have five (5) minutes. The applicant may also call the Zoning Official or other staff member who are present as a witness and ask them questions. Again, the time limit for questions is five (5) minutes.
4. Those who present evidence against the application will be sworn in and will be provided five (5) minutes each to present evidence and witnesses that address the criteria. Those who present evidence against, may also call the applicant, Zoning Official, witnesses or other staff members that are present as witnesses and ask them questions, subject to the five-minute time limit. Extension of time limits may be granted by the Chair.
5. The applicant or its attorney may then cross examine those presenting evidence against, subject to control by the chair and county attorney. Cross-examination shall be five (5) minutes for each witness.
6. Sharing or transferring time is not allowed and anyone presenting repetitious evidence or evidence that does not address the criteria will be directed to stop and address the criteria.
7. Evidence must be relevant. Relevant evidence is that which addresses the criteria in the County Code and the specific matter under consideration. Irrelevant evidence is that which does not address the County Code or the matter under consideration or is a personal attack as to presenters or Board members or is loud or boisterous to the point that it interrupts the

proceedings. The Chair will advise any person who violates these rules to stop. Failure to stop may lead to removal from the Chamber by the Bailiff or Deputy Sheriff.

8. Persons presenting evidence will address the Board, at the podium, and if there are documents or photos they must be presented when the particular individual is testifying. No documents will be returned, as they become a part of the record.

9. As a Quasi-Judicial Hearing, numbers of individuals for or against a particular item will not be considered. The meeting is being taped; therefore, there can be no applause or outbursts.

10. The Clerk shall state what documents will be placed into evidence and a motion shall be made to move those documents into the record. Any new or additional documents presented into evidence either by a sworn individual or staff shall also be included in the motion moving the documents into the record.

11. The Office of the County Attorney represents the Board and provides advice to the Board including advice as to the procedures and the admissibility of evidence.

12. The Board will afford members of the audience who have not presented evidence for or against three (3) minutes each to address any information provided. The members of the public will not be sworn in. Their testimony will not be considered as evidence as to the matter under consideration.

13. The applicant will be permitted to provide rebuttal as to any evidence against (a maximum of ten (10) minutes).

14. Staff may have five (5) minutes to provide final comments to the Board.

15. The Board will then close the public hearing and will discuss the application and may ask questions of the applicant, staff or those presenting evidence against or witnesses for the application. Any motion of the Board should include whether or not the board finds competent substantial evidence in the record and/or testimony received to support the board's decision for approval or denial.

16. The strict rules of evidence applicable to a court proceeding will not be utilized; however, the Board, with the assistance of the attorney, may exclude evidence that is not relevant or material or is repetitious. Again, the Quasi-Judicial procedures are required by law and all those participating need to be aware of the procedures. Anyone who fails to follow the procedures may be required to stop his/her presentation or relinquish their time.

17. TO BE FAIR TO EVERYONE AND IN ORDER TO FOLLOW THE PROCEDURES, IF YOU HAVE ANY QUESTIONS PLEASE CALL THE COUNTY ATTORNEY'S OFFICE AT (904) 530-6100 OR THE PLANNING DEPARTMENT AT (904) 530-6300.

1. SUBSTANTIAL COMPETENT EVIDENCE

In order to sustain a local government's quasi-judicial land use decision, it must be shown that there was "substantial competent evidence" presented to the board to support its rulings. *Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993). Although simply stated, this requirement of "competent substantial evidence" is -- in the words of one court -- "susceptible to misunderstanding." *Lee County v. Sunbelt Equities, II, Ltd. Partnership*, 619 So.2d. 996, 1003 (Fla. 2d DCA 1993). Competent substantial evidence "involves a purely legal question;" that is:

[W]hether the record contains the necessary quantum of evidence. The circuit court is not permitted to go farther and *reweigh* that evidence (*e.g.*, where there may be conflicts in the evidence), or to substitute *its* judgment about what *should* be done for that of the administrative agency.

The seminal case defining "substantial competent evidence" is *DeGroot v. Sheffield*, 95 So.2d 912 (Fla. 1957). In that case, the Florida Supreme Court defined competent substantial evidence as "such relevant evidence as a reasonable mind would accept as adequate to support a conclusion."

In sum, quasi-judicial decisions must be supported, in the record, by evidence that is both legally competent and quantifiably substantial.

2. Expert Testimony

Expert testimony is considered to be substantial competent evidence as long as the expert gives testimony that is within his area of expertise and is based either facts known to the expert, a hypothetical situation or facts disclosed at the hearing. It is important that expert witnesses state their qualifications on the record or submit their resume to the quasi-judicial body record.

The reports and recommendations of a local government professional planning staff have long been recognized as the type of expert testimony sufficient to sustain a quasi-judicial zoning decision where the statements in the report are supported by the facts and are not merely conclusory in nature and are within their area of expertise.

In addition to professional planning staff recommendations, the courts have also held decisions of a local government's Planning and Zoning Board may also constitute substantial competent evidence upon which to grant or deny a zoning request. *Hillsborough County Board of County Commissioners v. Longo*, 505 So.2d 470 (Fla. 2d DCA 1987); *Connetta v. City of Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981).

In contrast, the "testimony" of attorneys does not constitute substantial competent evidence. *National Advertising Co. v. Broward County*, 491 So.2d 1262 (Fla. 4th DCA 1986). Attorneys generally appear on *behalf of* a party; they are advocates -- not witnesses. As such, absent stipulation by the opposing party, they cannot testify. Although mere conclusory assertions of law may sound persuasive, they fall far short of satisfying the requisite foundational element of "competent" evidence.

3. Citizen Testimony

Florida courts have long acknowledged the legitimate interest of neighboring property owners in preserving the character of their neighborhood. As recently recognized by the Fourth District Court of Appeal:

The role of the governmental entity is to arrive at sound decisions affecting the use of property within its domain. *This includes receiving citizen input regarding the effect of the proposed use on the neighborhood*, especially where the input is fact-based.

City of Dania v. Florida Power & Light, 718 So.2d 873 (Fla. 4th DCA, 1998).

In short, although citizen testimony may be considered, it can only be used to support a quasi-judicial zoning decision when it is based on something more than mere opinions. Popularity polls of neighborhood residents do not constitute substantial competent evidence. See *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974).

This issue regarding the weight and legal sufficiency to be accorded public “concerns” was recently revisited by the Third District Court of Appeal in the case of *Metropolitan Dade County v. Section 11 Property Corp.*, 719 So.2d 1204(Fla. 3d DCA 1998). In that case, the court expressly considered whether the opposition of neighboring property owners to a proposed land use could be considered as “competent substantial evidence” sufficient to withstand judicial review of the local government’s decision to deny the zoning request. According to the developer (as well as the circuit court), the citizen testimony was “merely opinion” and therefore insufficient grounds for denying the proposed development.

a. Examples of Unacceptable Citizen Testimony

T-Mobile South, LLC vs. Cobb County, Georgia, 2011 WL 336641

The comments of witnesses must be probative or competent as to whether the standards in the ordinance have been satisfied. The courts have universally held that objections of neighborhood residents, without more, are not a sound basis for denying a permit.

Examples of citizen testimony that does not constitute substantial competent evidence include: *Pollard v. Palm Beach County*, 560 So.2d 1358 (Fla. 4th DCA 1990) (special exception for an ACLF; neighbors testified as to traffic, light and noise problems that would occur if permit approved); *Flowers Baking Co. v. City of Melbourne*, 537 So.2d 1040 (Fla. 5th DCA 1989) (gas station will cause tremendous traffic problem adjacent to condominium inhabited by retirees); *City of St. Petersburg v. Cardinal Industries Development Corp.*, 493 So.2d 535 (Fla. 2d DCA 1986) (lay testimony insufficient to sustain denial; concerns that construction would be done by labor force from outside the area, wooden homes would be a fire hazard); *BML Investments v. City of Cassleberry*, 476 So.2d 713 (Fla. 5th DCA 1985), *rev. denied*, 486 So.2d 595 (Fla. 1986) (development plan approval denied; testimony of residents regarding relationship of project to surrounding neighborhood insufficient to deny plan approval); *City of Apopka v. Orange County*, 299 So.2d 657 (Fla. 4th DCA 1974) (special exception for airplane landing strip; noise and cost of future home construction cited by interested residents); *Conetta v. Sarasota*, 400 So.2d 1051 (Fla. 2d DCA 1981) (special exception for guest house; residents stated it would not conform to neighborhood); *Miami Mental Health Center v. City of Miami*, 3 Fla. L. Weekly Supp. 91 (Fla. 11th Cir. Ct. 1995) (two residents testified as to declining property values if mental health facility was approved; testimony disapproved as ambiguous); *Robinson v. City of Miami Beach*, 3 Fla. L. Weekly Supp. 320 (Fla. 11th Cir. 1995) (testimony by resident that helicopters are dangerous was unacceptable as contrary to a city code which allowed the permitting of helicopter pads);

Similarly, expressions of mass opinions from neighborhood residents do not constitute substantial competent evidence. It has long been common practice at a hearing for someone to get up and ask the question: “How many people here oppose this project?” A large number of the citizens present stand or raise their hands. Acceptable? No!

The function of a quasi-judicial board must be exercised on the basis of facts adduced at the hearing and upon appropriate zoning principles and objectives as set forth in the zoning ordinance and should not be based on a mere poll or plebiscite of the neighbors.

b. Examples of Acceptable Citizen Testimony

Verizon Wireless vs. City of Jacksonville, Florida 670 F. Supp. 2d 1330 (2009)

Courts

Verizon vs. City of Jacksonville, FL

- 1) The decision to deny or approve must be in writing and supplemented by competent substantial evidence combined in a written record.
- 2) Is the evidence general opinion rather than the facts?

- 3) The testimony included general evidence presented by a local realtor with 16 years' experience that locating cell phone towers in residential neighborhoods devalues surrounding properties and makes them more difficult to sell. More specifically, the realtor stated that she had "already lost potential buyers for her own property in the area because of the proposed tower". Residents also testified about aesthetic issues. The aesthetic evidence was supported by the objective evidence of the Realtor.
- 4) Blanket aesthetic objection does not constitute substantial evidence under §332. Such a standard would eviscerate the substantial evidence requirement and unnecessarily retard mobile phone service development. Aesthetic objections coupled with evidence of an adverse impact on property values can constitute substantial evidence.