BEFORE THE CITY COMMISSION
CITY OF STUART, FLORIDA

ORDINANCE NUMBER 2467-2021

AN ORDINANCE OF THE CITY OF STUART AMENDING ARTICLE XI; SECTION 11.03.00 - QUASI-JUDICIAL PROCEEDINGS; PROVIDING FOR A SEVERABILITY CLAUSE AND A CONFLICTS CLAUSE; PROVIDING FOR AN EFFECTIVE DATE AND FOR OTHER PURPOSES.

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WHEREAS, the City Commission for the City of Stuart, Florida, is authorized by provisions in Chapter 166, Florida Statutes, to establish programs providing for the health, safety and general welfare of the residents of Stuart, Florida; and

WHEREAS, the City Commission has determined that there exists a need to amend Chapter 11.03.00 of the Land Development Code pertaining to Quasi-Judicial Proceedings to provide additional guidelines pertaining to the procedures to be followed during the public hearing; and

WHEREAS, Florida Statute, Section 286.0115 authorizes the City Commission to adopt or amend the quasi-judicial proceedings in order to remove the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose said communications; and

WHEREAS, the City Commission recognizes that, when it sits in its quasi-judicial capacity, it is required to fairly and properly apply the codes and laws of the City to a particular applicant or application; and

WHEREAS, the U.S. and Florida Constitutions require that basic procedural due process of law must be afforded in quasi-judicial proceedings, which includes notice and an opportunity to be heard and, in some instances, the right to cross-examine witnesses; and

WHEREAS, Florida law requires that, in addition to affording due process to maintain fairness and impartiality, the City must base any quasi-judicial decision on competent substantial evidence and must follow the essential requirements of the law as set forth in its codes and the Florida Statutes; and

WHEREAS, Florida Statutes, § 286.0114, recognizes that rules of public participation which are appropriate for legislative or administrative agenda matters are exempt from quasi-judicial proceedings; and

WHEREAS, the City Commission determines that it is in the best interests of the public welfare of its citizens to establish an order of proceedings and rules of order to be followed in quasi-judicial public hearings.

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NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF STUART, FLORIDA, THAT:

SECTION 1: The City of Stuart Land Development Regulations, Article 11, Section 11.03.00 – Quasi-Judicial Proceedings, is amended to read as follows:

11.03.00. - QUASI-JUDICIAL PROCEEDINGS
Sec. 11.03.01. - Intent.

A. Quasi- Judicial is an administrative decision wherein the board applies the policies and codes to the evidence presented by the parties.

B. The intent of this section is to provide an efficient and equitable procedure for the consideration by the city commission, the board of adjustment and the local planning agency of quasi-judicial matters in the course of quasi-judicial proceedings.

Sec. 11.03.02. - Ex-parte communications.

A. Any person not otherwise prohibited by statue, charter provision, or ordinance may discuss with any city official the merits of any quasi-judicial matter on which action may be taken by a city board on which the city official is a member.

B. If the communication generates a record, the record shall be a public record of the city and shall be available for public review upon request. An ex-parte communication, investigation, site visit or expert opinion shall be disclosed by the city official who is a party thereto at the commencement of the hearing The board member shall use their best efforts to identify the location, substance of the discussion and identity of the other parties when disclosing the ex parte communications.

Sec. 11.03.03. - Notice of quasi-judicial hearings.

A. Notice of the date, time and place of a quasi-judicial hearing shall be given as required by this Code for the type of quasi-judicial proceeding being commenced.

B. Mailed notice and published notice shall also advise that any affected person intervene in the proceeding and will be entitled to present evidence at the hearing including the sworn testimony of witnesses and relevant exhibits and to cross-examine all witnesses by complying with the intervenor process set forth in this codenot less than five days prior to the hearing. A party is not entitled to participate as an intervenor merely because it has a general interest in the issue being decided. Instead, the proposed intervenor must show that it will suffer an injury in fact. Standing requires showing that one will suffer special damages that differ in kind, rather than degree, from others in the community. Merely being an abutting property owner or one entitled to notice of the quasi-judicial proceeding may be a factor, but it generally cannot be the sole factor. One must still show that their affected interest is different from others in the community at large.

Sec. 11.03.04. - Quasi-judicial hearings, generally.

A. A party in any quasi-judicial proceeding may be represented by legal counsel. Statements of counsel presented as argument during a quasi-judicial hearing shall not be considered as evidence. Counsel for a party shall not be subject to cross-examination.

B. The city attorney shall act as attorney to the board. Any motions or objections made by a party may be referred to the city attorney for advisory ruling. The presiding officer shall act on behalf of the board and shall respond to motions and other matters with the assistance of the city attorney. The Board shall have the discretion to direct the City Attorney or City Manager to rule on objections and procedural issues during the hearing.

C. All testimony presented to the board shall be under oath administered by the city attorney or other person authorized to administer oaths. All parties shall have the opportunity to present evidence to the board and to call and cross-examine witnesses. A member of the board may question a witness at any time during the testimony of that witness.

D. . Evidence will be determined admissible if it is relied upon by reasonably prudent persons in the conduct of their daily affairs and would be admissible in a court of law. Irrelevant or unduly repetitious evidence may be excluded by the presiding officer.

Sec. 11.03.05. - Commencement of quasi-judicial proceedings.

A. A quasi-judicial proceeding shall commence at such time as the city development department certifies that it has received a complete petition. A complete petition shall include the appropriate filing fee, data submittal requirements, and shall be date stamped by the department when properly filed. Each proceeding shall be given a case number and each case file shall be separately maintained by the department as a public record of the city.

B. The petition shall identify the subject property by legal description and by street address, if available. The petition shall also identify all owners of the subject property, , by name, address and telephone number.

C. The petitioner shall be identified by name, address and telephone number. If the petitioner is not an individual, the petition shall contain the name, address and telephone number of the corporation or other entity in whose behalf the petition is filed and of the authorized representative of the petitioner.

D. If the petitioner is not the sole owner of the subject property, the petition shall be accompanied by a letter or other written notarized authorization from each owner that the applicant is authorized to file the specific petition.

Sec. 11.03.06. - Parties.

A. The parties to a quasi-judicial proceeding shall be the petitioner, the city, and any affected person who has qualified to participate as an intervenor pursuant to this code. Forms for a notice of intent to intervene shall be provided by the Clerk upon request. A notice of intent to act as a party in a quasi-judicial proceeding shall be accompanied by the payment of a fee of as set forth in the City Fee schedule attached to this code as Exhibit A.

B. A party shall be entitled to participate at the hearing and may present evidence to the board. A party may call witnesses, present relevant exhibits, cross-examine witnesses, make motions and objections, and present a summary statement to the board at the conclusion of the evidence.

Any person who files a notice of intent to be a party shall be presumed to be an affected person unless the status of that person is challenged by another party. In this event, the board shall determine whether or not the person who claims to be an affected person is an affected person as defined herein. The Board must rule on the challenge regarding the proposed intervenor's status prior to the introduction of any evidence in the proceeding. It can occur at a separate meeting or hearing or in the alternative the decision can be made by the board directly before the proceeding. The Objecting party shall provide the basis of the objection and any supporting case law or opinions and the proposed intervenor shall be given a reasonable opportunity to respond. The Board shall then decide if the proposed intervenor meets the qualifications as set forth in 11.03.03.

Sec. 11.03.07. - Order of presentation.

A. A quasi-judicial hearing shall begin with a statement by the city attorney which shall include the reading of the Title of the proposed Ordinance or Relief, the standards to be applied to the evidence by the board, the burden of proof, and the identity of all parties and the order of their presentations.

B. The Board shall use the following guidelines as an outline for implementing the quasi-judicial procedure.

1. **MAYOR**: Introduces the item by reading the name of Agenda Item.
2. **MAYOR**: Directs the City Attorney to read the title of Agenda Item.
3. **MAYOR**: "DO THE COMMISSIONERS HAVE ANY EX PARTE COMMUNICATIONS TO DISCLOSE?"
4. CITY COMMISSIONERS disclose *ex-parte communications*, if any.
5. **MAYOR**: Directs the City attorney to place any potential witnesses under oath.
6. **MAYOR**: "WILL THE DEVELOPMENT DEPARTMENT PLEASE PROVIDE A BRIEF SUMMARY OF THE AGENDA ITEM INCLUDING THE LOCATION, SIZE OF THE PROPERTY, CURRENT ZONING, ZONING REQUESTED THE LIST THE APPLICANT'S REQUESTS TO DEVIATE FROM THE LAND USE DEVELOPMENT REGULATIONS."
7. **MAYOR**: Yields the floor to the Petitioner to present its request to the City Commission.
8. **MAYOR**: "DO THE COMMISSIONERS HAVE ANY QUESTIONS FOR THE APPLICANT?"
9. **MAYOR**: "DOES THE PETITIONER WISH TO OFFER ANY ADDITIONAL INFORMATION BEFORE CONCLUDING ITS PRESENTATION?"
10. **MAYOR**: Announces that the presentation of evidence has ended, and the hearing is closed.
11. **MAYOR**: "DOES ANY MEMBER OF THE PUBLIC WISH TO MAKE A COMMENT ON THE PENDING MOTION?" *Public Comment is limited to 3 minutes per the City Code*
12. Mayor requests direction in the form of a Motion.
13. **MAYOR**: Repeats or Clarifies the Motion for the record and asks the Commissioners to deliberate the motion. Commissioners are encouraged to discuss the Motion and their respective positions.
14. **MAYOR**: Upon conclusion of the Deliberation, the Mayor as the Clerk for a recorded vote of the Commission.

CLERK: Records the vote by roll call. The Clerk shall randomize the voting order.

C. The first party to present evidence to the board shall be the city. The city shall begin the hearing with an analysis of the petition which includes a consistency determination with regard to the City Comprehensive Plan and a determination of compliance with the procedural requirements of law. The city shall advise the board specifically as to whether the petition meets all applicable standards of local law and any conditions which should be imposed in order to meet those standards. The city shall conclude its presentation with a specific recommendation to the board to approve, to approve with conditions, or to deny the petition.

D. Following the presentation of the city, the petitioner shall make a presentation to include evidence relating to the applicable standards for review of the petition. The petitioner may include a description of the nature of the petition if there is additional information that has not been previously provided.

E. Other parties shall follow the petitioner in the order of their filed notices. Thereafter, persons who are not parties may testify. Last, the city and the petitioner shall be permitted to provide additional evidence to rebut the evidence presented by any other party or person. At the conclusion of the evidence, each party shall be permitted to make a brief summary statement in the order of their appearance. Considering the complexity of the issues presented, the presiding officer may limit the time of summary statements.

Sec. 11.03.08. - Burden of proof; conditions; re-zonings.

A. The petitioner shall have the burden of proof at the hearing to show by the greater weight of the evidence that the petition is consistent with the City Comprehensive Plan and complies with all procedural requirements of law. Conditions may be suggested by the petitioner, the City or any party, or may be imposed by the board, which are intended to assure consistency and compliance.

B. If the quasi-judicial matter petitioned is a rezoning of land, once the petitioner satisfies the burden of proof at the hearing, the burden shall shift to the City or other party to show by the greater weight of the evidence that maintaining the existing zoning classification accomplishes a legitimate public purpose. In such event, the rezoning petition shall be denied.

1. Further explanation: Once the applicant has proven that it is entitled to the rezoning, the burden shifts to require the other party to demonstrate that keeping the original zoning outweighs the new classification even though the applicant has already proven that it is entitled to the change.
2. This burden includes the requirement to show that maintaining the existing zoning will serve a legitimate public purpose which is more significant than the new classification which is presumed to be entitled based upon the evidence.

Sec. 11.03.09. - Cross examination.

A. After each witness testifies directly, each party shall be permitted to question the witness on cross-examination. The order of cross-examination shall be the same as the order of presentation established for the hearing. Cross-examination may include matters and issues which are not related to the direct testimony of the witness.

1. The cross examination should be relevant to the proceedings and testimony provided on direct examination.

Sec. 11.03.10. - Deliberation by the commission after Public Comment.

A. Public Comment – The Commission shall hear public comment following the closing of the hearing. At the close of the hearing, no further evidence shall be accepted and the City Commissioners shall consider Public Comment before deliberating on the matter.

1. Policies. All comments made during any Public Comment period shall be subject to the following procedures:
   A. Persons who wish to make a statement during the meeting will register on the Request to Speak form,
   B. Each person who signs up to speak will have up to three minutes to make their statement. Speakers will be acknowledged by the mayor, or meeting leader, in the order which the Request to Speak forms were received. Speakers shall address the group and will begin their statement by first stating their legal name and address.
   C. Statements are to be directed to the group as a whole, and not to individuals. Public Comment is not intended to require a group member to provide an answer to the speaker. Discussions between speakers and members of the audience will not be allowed.
   D. Speakers will be courteous in their language and presentation.
   E. Only one speaker will be acknowledged at a time. In the event a group of persons supporting or opposing the same position desires to be heard, in the interest of time, the group should designate a spokesperson to express the group's concerns. Likewise, in the event the number of persons wishing to attend the hearing exceeds the capacity of the meeting place, the group should designate a delegate to attend the meeting on behalf of the group.

B. The board shall publicly deliberate on the evidence and shall limit its deliberation to the evidence presented at the hearing. During deliberation, no further testimony shall be taken and the commission members shall not ask for additional information of parties or witnesses.

   1. The Board should refrain from basing its decision on evidence that was not presented during the public hearing.
   2. The board shall determine whether the petitioner has met the burden of proof by a showing that the petition is consistent with the City Comprehensive Plan and complies with all other applicable standards of review and procedural requirements of law. The board shall also consider any lawful conditions which may be imposed necessary to meet the applicable standards of review.
   3. Deliberations shall conclude with a determination by the city commission to approve, to approve with conditions, or to deny the petition.

C. Summation: Each party shall be entitled to a brief summation after the public comment period in order to address any issues raised. However, no new testimony or evidence shall be admitted. Because the applicant has the ultimate burden of proof, the applicant shall speak last. Prior to the summation, the Board shall designate an equal amount of time for the representative of each party. In the event that there is more than one intervenor, the applicant shall be entitled to the same amount of time as all of the intervenors combined.

Sec. 11.03.11. - Continuances.

A. A continuance of a quasi-judicial proceeding may be requested by any party at any time prior to the conclusion of the hearing. Such request may be granted by the board in the interests of justice and fairness. If granted, the hearing shall be continued by the board to a specific date and time considering the reason for the continuance. If it is not reasonable to reschedule the hearing for a specific date and time, then the applicant shall be responsible to provide adequate notice of the new date pursuant to the requirements of this code.

Sec. 11.03.12. - Order.

A. The determination of the board shall be reduced to a written order in the form of an ordinance, resolution, development order or other appropriate document. At the discretion of the board, the order may be recorded in the public records of Martin County, Florida. The costs of recording shall be paid by the petitioner.

B. The order shall conform exactly to the evidence presented at the hearing and to the determination of the board. The order shall contain a clear statement of approval or denial, and shall include any and all conditions of approval necessary to assure consistency with the City Comprehensive Plan and compliance with other applicable standards of review and all procedural requirements of law.

Sec. 11.03.13. - Record of proceedings.

A. A quasi-judicial hearing shall be tape recorded by the secretary of the board. The tape recording shall be preserved by the secretary as a public record of the City. All evidence presented at the hearing in the form of documents, photographs, maps and other written documents shall be preserved with the tape of the hearing. Large exhibits will be reduced to digital form and preserved accordingly.

Sec. 11.03.14. - Judicial review.

A. A final determination of the City Commission is subject to judicial review in the Circuit court of the Nineteenth Judicial Circuit of the State of Florida according to established rules of law as provided at F.S. §163.3215. The record of the quasi-judicial proceedings conducted by the City shall be available to any person who seeks review of a final decision of a board until the expiration of the appeal period.
B. The time for appeal shall commence on the date the written order of the board which sets forth its final determination is signed by the Mayor.

SECTION 2: If any section, phrase, sentence or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 3: – Effective date.

The ordinance from which this article derives shall take effect immediately upon adoption.

Commissioner _____ offered the foregoing Ordinance and moved its adoption on First Reading. The motion was seconded by Commissioner _____ and upon being put to a roll call vote, the vote was as follows:

	YES	NO	ABSENT	ABSTAIN
EULA R. CLARKE, MAYOR				
MERRITT MATHESON, VICE MAYOR				
BECKY BRUNER, COMMISSIONER				
TROY MCDONALD, COMMISSIONER				
MIKE MEIER, COMMISSIONER				

ADOPTED on first reading this ____ day of _____.

ATTEST:

_____
MARY R. KINDEL
CITY CLERK

_____
EULA R. CLARKE
MAYOR

APPROVED AS TO FORM
AND CORRECTNESS:

_____
MICHAEL J. MORTELL, ESQ.
CITY ATTORNEY

NOTE: Below is the current Request to Speak (Public Comment) form used by the City of Stuart. The following form is the State of Florida **DIVISION OF LIBRARY AND INFORMATION SERVICES** "Meeting Appearance Record Form". They have been included for feedback from the City Commission.

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CITY COMMISSION MEETING **SPEAKER #_____**

REQUEST TO SPEAK

Please complete form and submit it to the City Clerk prior to Public Comment.

NAME _____ DATE _____ ITEM#_____OR PUBLIC_____

ADDRESS_____CITY_____ZIP_____

PHONE_____EMAIL_____

ADDRESSING THE CITY COMMISSION (ORD# 2450-2020)

1.) Members of the public who have been called upon to speak should come forward to the microphone; state their name, city in which they reside, and the item number.

2.) All remarks shall be addressed to the City Commission as a body and not to a particular City official.

3.) PREPARED STATEMENTS shall be presented to the City Clerk for the record.

4.) To ensure fair and equal treatment of all who appear before the City Commission, speakers will be limited to 3 minutes.

DECORUM (ORD 2450-2020)

Any person making personal, impertinent, irrelevant, or slanderous remarks, or who becomes boisterous while addressing the City Commission or while attending the Commission meeting, shall be removed from the City Commission Chambers at the direction of the presiding officer. The sergeant-at-arms shall carry out all orders and instruction given by the Mayor for the purpose of maintaining order and decorum at the Commission meeting.

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FLORIDA FORM

DIVISION OF LIBRARY AND INFORMATION SERVICES

MEETING APPEARANCE RECORD FORM

One form per speaker. Limit three (3) minutes per speaker. For online or teleconference meetings, Meeting Appearance Record Forms must be emailed to the meeting coordinator listed in the Florida Administrative Register meeting notice at least 60 minutes before the start of the meeting. Meeting Appearance Record Forms will be available 30 minutes before the start of in person meetings.

By filling out this form I am requesting to speak at a public meeting:

Meeting name and date: _____

Name (please print): _____

Lobbyist registered with Legislature: ☐ Yes ☐ No

Representing: _____

Please fill out below as applicable:

_____ I wish to make a comment on the following agenda items during the meeting (add additional lines as applicable):

1. _____ ☐ Support ☐ Oppose ☐ Inform
2. _____ ☐ Support ☐ Oppose ☐ Inform
3. _____ ☐ Support ☐ Oppose ☐ Inform

_____ I wish to make a comment during the Public Comment period of the meeting.

_____ I wish to make a comment related to the following grants (in addition, state your relationship to the applicant) (add additional lines if applicable):

1. _____ ☐ Support ☐ Oppose ☐ Inform
2. _____ ☐ Support ☐ Oppose ☐ Inform
3. _____ ☐ Support ☐ Oppose ☐ Inform