

Great Moments in Land Use Law

St. Augustine City Attorney's Office, 904-825-1052

A Training
Tool for
Quasi-
Judicial
Boards



What is a Quasi-Judicial Board?

- A board or committee consisting of elected or appointed members who must apply the law and the facts to a specific applicant for a development order.
- A Quasi-Judicial Board sits as the judge in the case.
- You don't have to wear a black robe, but you do have to behave like a judge, which means...



My Role Changes

Legislative Role

- A noticed public *meeting*.
- General public policy is commented on.
- I am free to discuss with residents their views on public policy.
- Decisions can be based on community support for the proposed government action.
- i.e.: enacting a parking meter ordinance.

Quasi-Judicial Role

- A noticed public *hearing*.
- Evidence and legal argument are presented.
- I must disclose all communication that occurred outside of the hearing.
- Decisions cannot be based on the 'clamor of the crowd'.
- i.e.: an order on a rezoning application.

So what visible differences will I observe?

Legislative Role

- Supporters and opponents may all freely share their views on proposed legislation or administrative issues during public comment periods.
- Op-Ed pieces, petitions, rallies, applauding in support of a speaker (so long as it is not disruptive) are all part of our democratic tradition.

Quasi-Judicial Role

- Courtroom decorum should be maintained, and witnesses testifying may get sworn in.
- Citizens may comment, but in order for those comments to be the basis of a decision they must be factually based on first hand witness testimony, not personal opinion.
- Experts can give their professional expert opinion.
- Petitions should be kept as part of the public record, but cannot be the basis for the decision.

What other roles change?

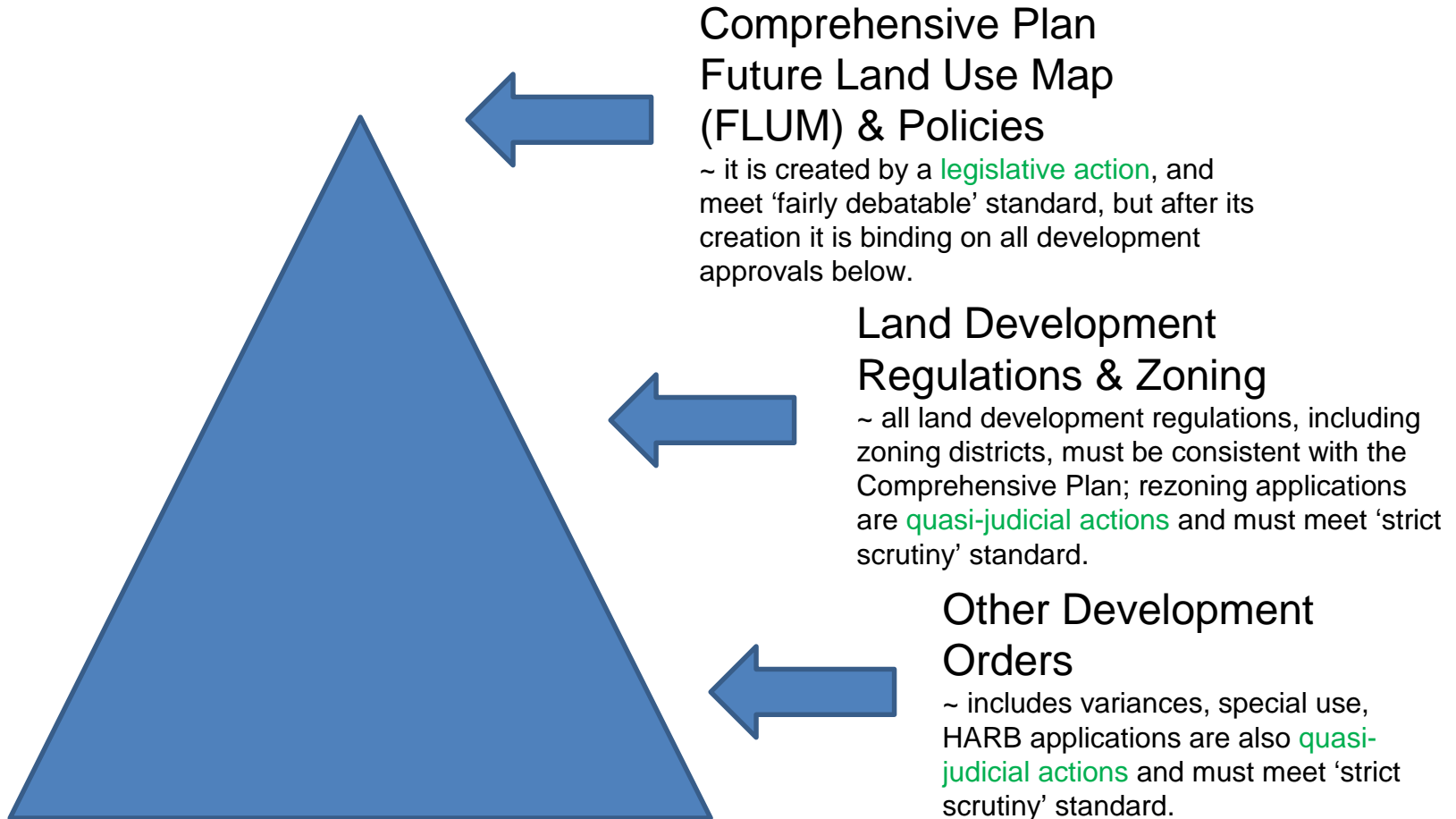
Legislative Role

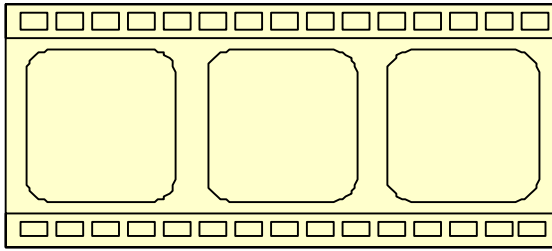
- Everyone gets equal time to address the governing body, first come, first served.
- The City Attorney may actively present items for consideration for both administrative and legislative functions. In litigation, their role is to vigorously advocate for their client, the City.

Quasi-Judicial Role

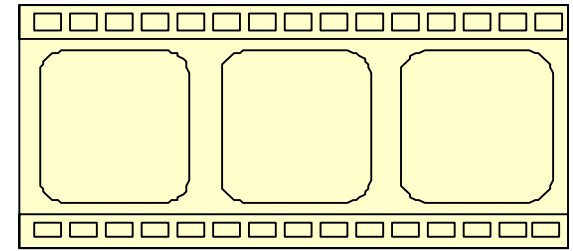
- The applicant for a development order has the right to present evidence, cross-examine witnesses, and rebut the argument or testimony presented.
- The City Attorney cannot advocate against an applicant or weigh the evidence for the board. Their role is to neutrally advise the board on the applicable law. [*Cherry Communications v. Deacon*, 652 So.2d 803 (Fla. 1995)]

What is “land use” and what is “zoning”?





Landmark cases,
or *Great Moments*
in Land Use Law



- **Snyder:** Competent substantial evidence
- **Porpoise Point:** ‘Straight’ rezoning does not require looking into the actual development plan
- **Caps:** Conditions must be related to standards
- **Machado:** Consistency with Comp Plan
- **Bay Point Club:** ‘You got, what you got’
- **Blumenfeld:** Citizen testimony allowed w/limits
- **Nollan/Dolan:** Dual rational nexus test
- **Miller:** Clamor of the crowd not legal

Snyder

Brevard County v. Snyder, 627 So.2d 469 (Fla. 1993)

- The application of a general rule to a specific project is a quasi-judicial function that must meet strict judicial scrutiny.
- The applicant has the initial burden to prove consistency with the comprehensive plan and all applicable regulations, then burden shifts to the board to demonstrate that maintaining the existing zoning accomplishes a legitimate public purpose.
- Board decisions must be based on competent substantial evidence in the record.
- i.e.: a rezoning application is a quasi-judicial hearing.

Porpoise Point

Porpoise Point Partnership v. St. Johns County, 532 So.2d 727 (Fla. 5th DCA 1988)

- Board cannot force an applicant to rezone to a planned unit development or planned special development zoning category to enforce a specific development plan. The applicant must be willing to agree to those special zoning categories.
- Traditional zoning categories do not allow the board to look into specific development of the property beyond the allowable uses in that zoning category.
- i.e.: applicant had a right to apply for “straight” commercial rezoning, and the board could not direct and control the specific development plan at the rezoning stage.

Caps

Cap's-on-the-Water v. St. Johns County, 841 So.2d 507 (Fla. 5th DCA 2003)

- Special Use, Special Exception or Use by Exception orders may only place conditions that directly and proportionately relate to existing, listed criteria or standards in the code.
- Conditions imposed cannot be whimsical or capricious; the board cannot have limitless discretion to impose any condition, applicants are entitled to fair play.
- i.e.: the code included a standard that the special exception be controlled “in relation to the neighborhood”, therefore the board could impose reasonable conditions to meet that standard.

Machado

Machado v. Musgrove, 19 So.2d 629 (Fla. 3rd DCA 1988)

- Every development order must be consistent with the Comprehensive Plan. The Comprehensive Plan is the “constitution” of land use planning. No zoning, variance, or permit can waive its requirements.
- The board must prove with competent substantial evidence that its decision conforms with each element of the Comprehensive Plan.
- The decision of the board will be subject to the court’s “strict scrutiny” with no deference given to the board.
- i.e.: rezoning to “Professional Offices” designation for property in the “Estate Residential” Comprehensive Plan land use category violated the comprehensive plan.

Bay Point Club

Bay Point Club v. Bay County, 890 So.2d 256 (Fla. 1st DCA 2004)

- Certain property rights that exist by virtue of being allowed under prior law (known as grandfathering, non-conforming or vested rights) cannot be changed or expanded without losing that vested rights protection.
- i.e.: a development of regional impact had vested rights to the project as approved at the time; any proposed amendment to that approved project was not vested and had to comply with current law.
- *Note: local governments may enact more generous provisions as part of their Comprehensive Plan or land development regulations.

Blumenthal

Metro Dade County v. Blumenthal, 675 So.2d 598 (Fla. 3rd 1995)

- Citizen testimony in a rezoning hearing is allowed and can be deemed competent substantial evidence if it is fact-based and not merely expressing an opinion.
- The purpose of a public hearing is not to conduct an opinion poll but to allow citizens to present facts.
- i.e.: the county had standards regarding compatibility with the neighborhood in its code, therefore neighbors could testify as to the existing factually discernible patterns in the neighborhood.

Nollan/Dolan

Nollan v. California Coastal Commission, 483 U.S. 825, 107 S.Ct. 3141 (1987); Dolan v. City of Tigard, 512 U.S. 374, 114 S.Ct. 2309 (1994)

- The United States Supreme Court has a two-part test when applying conditions to development permits, referred to as the “dual rational nexus test”.
- First, there has to be a logical connection (or “essential nexus”) between a legitimate regulation and the condition imposed on the applicant . *Nollan*
- Second, the condition imposed must be roughly proportionate in both nature and extent to the proposed impact of the permit application. *Dolan*
- i.e.: cannot require that homeowner give easement over their property for public to reach the beach in order to get rebuilding permit (*Nollan*); cannot require the donation of a bicycle greenway as a condition for a hardware store site plan approval (*Dolan*).

Miller

Miller v. MacGill, 297 So.2d 573 (Fla. 1st DCA 1974)

- Zoning decisions cannot be based on the ‘clamor of the crowd’. Popular support, or lack thereof, is not a legal basis for a zoning decision.
- Constitutionally, you have a right to all uses on your property, unless a properly enacted regulation of general application prohibits you from doing so.
- i.e.: fact that an overwhelming number of adjacent property owners in the area did not want the commercial project was not a legally sufficient reason to deny it.