

# Planning Commission Agenda

## March 7, 2024 - 5:30 p.m.

**Daniel Grannan – Chair**  
**Tonia Herring**  
**Richard Laxton**  
**Deborah MacArthur Anderson**  
**Karen Cunningham**



**Terry Thompson– Vice Chair**  
**Larry Schenavar**  
**Alternate 1 – Gregory Acker**  
**Alternate 2 – Kimberly Salter**  
**Chuck Dixon – School Board\***

- 1) Call to Order
- 2) Roll Call
- 3) Moment of Silence
- 4) Pledge of Allegiance
- 5) Adoption of Agenda
- 6) Approval of Minutes: **February 1<sup>st</sup>, 2024**
- 7) Citizen Input: 3 minutes Public
- 8) Hearings: None
- 9) Training: **Quasi-Judicial Training** – Conduct training on Quasi-Judicial Hearings. Training will be presented by Attorney Robert Batsel of Gooding & Batsel, PLLC., to highlight application of Quasi-Judicial function.
- 10.) Unfinished Business
- 11.) New Business
- 12.) Citizen Input: 5 minutes
- 13.) Staff Comments
- 14.) Commissioner’s Comments
- 15.) Chairman’s Comments
- 16.) Adjournment

\*Appointed by School Board pursuant to §163.3174, Florida Statutes.

### NOTICE TO PUBLIC

**Any person who decides to appeal any decision of the Planning Commission with respect to any matter considered at this meeting will need a record of the proceedings and for such purpose may need to provide that a verbatim record of the proceeding is made, which record includes testimony and evidence upon which the appeal is to be based. (Section 286.0105, Florida Statutes)**

**Any person requiring reasonable accommodation at this meeting because of a disability or physical impairment should contact the City of Crystal River, City Manager's Office, 123 N. W. Highway 19, Crystal River, FL 34428 (352) 795-4216, at least two (2) days prior to the meeting.**



**Planning Commission Draft Minutes  
February 1, 2024 - 5:30 p.m.**

**Daniel Grannan – Chair  
Tonia Herring  
Richard Laxton  
Deborah MacArthur Anderson  
Karen Cunningham**



**Terry Thompson– Vice Chair  
Larry Schenavar  
Alternate 1 – Gregory Acker  
Alternate 2 – Kimberly Salter  
Chuck Dixon – School Board\***

- 1) Call to Order at 5:30 PM
- 2) Roll Call

**Commissioners Present: Daniel Grannan, Terry Thompson, Richard Laxton, Deborah MacArthur Anderson, and Larry Schenavar,**

**Commissioners Absent: Karen Cunningham, Gregory Acker, Kimberly Salter, and Tonya Herring**

**Staff Present: Rob Batsel City Attorney, Troy Slattery Interim City Manager, Jenette Collins Growth Management Director, Carly Hanson Assistant Growth Management Director, Heather Lacey Associate Planner, and Sabrina Utter Deputy Clerk**

- 3) Moment of Silence was led by Chairman Grannan
- 4) Pledge of Allegiance was led by Chairman Grannan
- 5) Adoption of Agenda – Motion to adopt the agenda was made by **Vice Chairman Thompson; seconded by Chairman Grannan.** -- Motion carried 5-0
- 6) Approval of Minutes: **January 4<sup>th</sup>, 2024 – Motion to approve the minutes of January 4<sup>th</sup>, 2024, was made by Commissioner Laxton; seconded by Chairman Grannan. Motion carried 5-0**

Terry Thompson stated for the record the names of the council members in attendance. (Ken Frink and Robert Holmes).

- 7) Citizen Input: 3 minutes -- None
- 8) Public Workshop:

**Draft Community Development Code** –Conduct a workshop to solicit public input and receive recommendations from the Planning Commission. A presentation will be made by Stringfellow Planning & Design, serving as the city’s planning consultant, to highlight the various design standards of the proposed form-based code. This item will be scheduled for another workshop at a future City Council

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meeting. The final adoption of the code will take place at future advertised public hearings before the Planning Commission and City Council.

**Presentation:** Staff member Jenette Collins introduced form-based code. Alex Stringfellow presented the draft of the proposed form-based code. Mr. Stringfellow indicated that the adoption of the new code would create a walkable downtown district for the City of Crystal River. Simon Hardt explained how hurricanes and FEMA regulations impact design standards and how this was considered when creating the proposed form-based code.

**Commissioner Discussion:** Commissioner Schenavar asked for a summary of changes, Mrs. Collins responded that there is no cross-out version at this time. Mr. Stringfellow also addressed the question. Commissioner Laxton presented concerns about the pitch of roofs on residential homes and porches, he also inquired about ADA accessibility. Mr. Stringfellow explained the roof height requirement and the benefit of porches. Commissioner Tompson also expressed concern about porches. Mr. Stringfellow explained the regulations, he added these items are in line with state statute. Commissioner Thompson expressed concern about 9-foot garage doors. Mr. Stringfellow explained garage requirements are no longer there. Commissioner Thompson requested the updated draft and Mr. Stringfellow explained that it was not available at this time. Commissioner Thompson asked if the size of the property would affect the zone, Mr. Stringfellow confirmed. Chairman Grannan inquired about stormwater and tree maintenance, Mr. Stringfellow addressed how the new code would apply, and Attorney Batsel explained how city properties are maintained. Commissioner MacArthur Anderson advised she did not have any concerns at this time. Commissioner Thompson suggested private roads maintained by HOA. Mr. Stringfellow discussed how past studies had negative results.

**Attorney Batsel inquired about PUD and conditional uses.** Mr. Stringfellow offered to meet later to go over some research options.

**City Council comment:** Councilman Ken Frink explained the issues the city has with drainage. Councilman Robert Holmes asked about setbacks. Mrs. Collins explained the new setback standards and buffer requirements. Councilman Holmes asked about fill dirt requirements and possibly prohibiting the use of fill. Attorney Batsel replied he was unsure and that he would research the issue. Mrs. Collins explained FEMA regulations in regards to fill. Counselman Holmes inquired about heavy industrial zoning, and Mrs. Collins explained only light industrial zoning would be allowable. Councilmen Holmes inquired about tree surveys at the preliminary plat stage. Mrs. Collins indicated that this is required under the current code.

**Public comment:** Davis Dinkins discussed drainage requirements. Gerard Mulligan 203 NW Bay Path Drive, Crystal River FL 34428 expressed concerns about the ability to have a tower on homes.

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- 9) Public Hearings: None
- 10.) Unfinished Business- None
- 11.) New Business- None
- 12.) Citizen Input: 5 minutes- None
- 13.) Staff Comments- Attorney Rob Batsel inquired about having a training at the next meeting. Mrs. Collins advised that there are no current applications for next meeting, therefore the training could occur.
- 14.) Commissioner’s Comments- None
- 15.) Chairman’s Comments- None
- 16.) Adjournment—Motion to adjourn the meeting was made by Vice chairman Thompson, seconded by Chair Grannan Motion Carried 5-0 Adjourned at 7:19 PM.

\*Appointed by School Board pursuant to §163.3174, Florida Statutes.

ATTEST:

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Recording Secretary Heather Lacey

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Chairman Daniel Grannan

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# QUASI-JUDICIAL HEARINGS

## City of Crystal River

### Update March 7, 2024

PRESENTED BY:

ROBERT W. BATSEL, JR., ESQ.

GOODING & BATSEL, PLLC

352.579.1290

# LEGISLATIVE FUNCTION

- BASED UPON SEPARATION OF POWERS

## 1. FORMULATION OF POLICY

- CONSIDERS WHAT THE LAW SHOULD BE

AND

- CREATES OR IMPLEMENTS LEGISLATION  
(ORDINANCES)



# QUASI-JUDICIAL FUNCTION

## 2. APPLICATION OF POLICY

- INTERPRETS & APPLIES EXISTING LAW (ORDINANCES) TO SPECIFIC FACTS PRESENTED AT HEARING

- KEY WORDS: "INTERPRETATION"  
"APPLICATION"  
"SPECIFIC FACTS"



# CONSTITUTIONAL MANDATES

## \* DUE PROCESS

- 5<sup>TH</sup> & 14<sup>TH</sup> AMENDMENT OF U.S. CONSTITUTION
- Article I Sec. 9 FLORIDA CONSTITUTION
- (NO PERSON SHALL BE DEPRIVED OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW)

# LEGISLATIVE FUNCTION

- MUST BE A RATIONAL RELATIONSHIP BETWEEN THE REGULATION AND A LEGITIMATE GOVERNMENT INTEREST
- REGULATION MAY NOT BE ARBITRARY, CAPRICIOUS OR UNREASONABLE
- IF FAIRLY DEBATABLE, WILL BE UPHELD

# DEFINITION

\* Quasi-Judicial

- Quasi = AS IF (SIMILAR TO)

- Judicial = JUDGING

ACTING AS A JUDGE AND JURY

# JUDGING

CONSIDERING EVIDENCE (TESTIMONY AND DOCUMENTARY)

MAKING FINDINGS OF FACT  
DRAWING CONCLUSIONS OF LAW  
ISSUING ORDERS

IMPOSING CONDITIONS  
POSSIBLY IMPOSING PENALTIES

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# DUE PROCESS


- \* PROCEDURAL DUE PROCESS
- \* USED IN QUASI-JUDICIAL HEARINGS
  - ADEQUATE NOTICE
  - OPPORTUNITY TO BE HEARD
  - FAIR AND IMPARTIAL TRIBUNAL (BOARD/COMM.)
  - JURISDICTION OVER SUBJECT MATTER

# DUE PROCESS PROCEDURAL (CONT.)

- \* "APPEAL" TO COURT (CERTIORARI)
- \* COURT WILL CONSIDER THE RECORD FROM THE HEARING AND APPLY THE FOLLOWING STANDARDS:

# COURT STANDARDS

WHETHER:


1. PROCEDURAL DUE PROCESS WAS PROVIDED  
(Notice & Opportunity to be Heard)
  2. THE LAW WAS CORRECTLY APPLIED (or stated  
conversely) THERE WAS A DEPARTURE FROM  
ESSENTIAL REQUIREMENTS OF THE LAW
- 




# COURT STANDARDS

3. THERE WAS ANY "COMPETENT SUBSTANTIAL EVIDENCE" IN THE RECORD TO SUPPORT THE BOARD'S DECISION
4. THE BOARD/COUNCIL WAS FAIR AND IMPARTIAL

# LEGISLATIVE FUNCTION

- \* AS PROVIDED BY LAW OR CODE
    - NEWSPAPER, LETTERS, POSTING
  - \* OWNER, APPLICANT, ADJACENT PROPERTY OWNERS
  - \* SPECIFIED TIME PRIOR TO HEARING
- 

# OPPORTUNITY TO BE HEARD

- \* RIGHT TO TESTIFY-UNDER OATH
  - \* RIGHT TO PRESENT WITNESSES & DOCUMENTARY EVIDENCE
  - \* SUFFICIENT TIME FOR PRESENTATION
  - \* RIGHT TO REASONABLE CROSS-EXAMINATION
- 


# QUASI-JUDICIAL

- \* CORRECT APPLICATION OF LAW TO FACTS
- \* LAW = PUBLISHED CRITERIA (ORDINANCE OR REGULATION)
- \* USUALLY CALLED "STANDARDS"
- \* IF STANDARDS ARE SATISFIED BY APPLICANT, PERMIT SHOULD BE APPROVED

# QUASI-JUDICIAL (LAND USE)

- \* APPLICANT (PETITIONER) HAS BURDEN OF DEMONSTRATING THAT PROPOSED USE IS CONSISTENT WITH COMP PLAN AND LAND DEVELOPMENT CODE (PRIMA FACIE)
- \* IF PRIMA FACIE ENTITLEMENT IS SHOWN, BURDEN SHIFTS TO CITY TO SHOW THAT MAINTAINING EXISTING ZONING IS LEGITIMATE PUBLIC PURPOSE

# COMPETENT EVIDENCE

- \* Real, fact based, material, reliable evidence that tends to prove points that must be proven and a reasonable mind would accept it as enough to support the proposed for conclusion.
  - \* Not conjecture
  - \* Not generalized opinion without support
- 

# IMPARTIAL TRIBUNAL

- \* IMPARTIAL = FREE FROM BIAS
- \* A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.
- \* *In re Murchison*. Cited by *Goldberg v. Kelly*  
U.S. Supreme Court



# IMPARTIALITY - EX PARTE COMMUNICATIONS

\* EX PARTE = ONE-SIDED AND OUTSIDE-OF-HEARING  
COMMUNICATIONS

- PRESUMPTIVELY PREJUDICIAL
- EXCEPTIONS VIA STATUTES 286.0115 F.S.
- CITY CODE

# EX PARTE COMMUNICATIONS

- \* CITY CODE REQUIRES DISCLOSURE ON RECORD AT HEARING, BEFORE VOTE (TO ALLOW INQUIRY) OF:
  - THE SUBSTANCE OF ANY COMMUNICATION AND IDENTITY OF ANY PERSON, GROUP OR ENTITY
  - WRITTEN COMMUNICATION (TO BE READ OR PUT INTO RECORD)
  - INVESTIGATIONS OR SITE VISITS; EXPERT OPINIONS RECEIVED


# 286.0115 F.S.

- \* RESPONSE TO *JENNINGS V. DADE COUNTY* ("EX PARTE COMMUNICATIONS ARE PRESUMPTIVELY PREJUDICIAL")
- \* LEGISLATION ALLOWS THE LOCAL GOVERNMENTS TO REMOVE PRESUMPTION OF PREJUDICE

# HEARING PROCEDURES

1. STAFF INTRODUCTION
2. PETITIONER PRESENTATION
3. COUNCIL QUESTIONS OF PETITIONER  
(STAFF MAY CROSS EXAMINE)
4. STAFF PRESENTATION
5. COUNCIL QUESTIONS OF STAFF  
(PETITIONER MAY CROSS EXAMINE)
6. PUBLIC TESTIMONY
7. COUNCIL MAY ASK QUESTIONS OF PUBLIC

# PROCEDURES (CONT.)

8. MAYOR/COUNCIL MAY ALLOW QUESTIONS OF PUBLIC TO BE POSED TO PARTIES
  9. PETITIONER'S REBUTTAL EVIDENCE
  10. CLOSING COMMENTS BY STAFF AND BY PETITIONER
  11. COUNCIL DELIBERATION AND ACTION
  12. MAYOR SIGNS AND FILES DEVELOPMENT ORDER WITH THE CLERK (USUALLY RESOLUTION OR COULD BE ORDINANCE)
- 

# EVIDENCE AT QJ HEARINGS

- \* GENERAL ADMINISTRATIVE RULE =
- \* FORMAL RULES OF EVIDENCE SHALL NOT APPLY
- \* HOWEVER, FUNDAMENTAL DUE PROCESS SHALL BE OBSERVED AND SHALL GOVERN THE PROCEEDINGS

# EVIDENCE AT HEARING

\* HEARSAY EVIDENCE SHOULD BE CONSIDERED ONLY IF CORROBORATED BY TESTIMONY

\* (HEARSAY = LETTERS, STATEMENTS THROUGH 3<sup>RD</sup> PARTIES, ETC.)

\* COMPETENT EVIDENCE

- MATTERS REQUIRING EXPERTISE

- OPINION TESTIMONY BY PERSON WHO IS EXPERT



# Recent Case

- \* *Village of Palmetto Bay v. Palmer Trinity Private School*  
– So.3d\_\_\_\_ (3DCA 7-5-2012)
- \* Village council approved special exception but reduced number of students from 1150 requested to 900 at the final hearing.
- \* Held: there was no competent substantial evidence to support the reduction.

# Recent Case

- \* *Carillon Comm. Residential v. Seminole County*  
45 So.3d 7 (5<sup>th</sup> DCA 2010)
- \* Issues: Due Process, Essential Requirements of Law
- \* Facts: Petition for PUD for mixed use UCF student housing. County Board approved.
- \* Neighboring Home Owners Assoc. challenged.

# Carillon (cont.)


- \* Circuit Court Upheld County decision.
- \* HOA challenged in Court of Appeal.
- \* Claim: Due Process denied because they were not allowed to cross examine witnesses at Board quasi-judicial hearing.

# Carillon

## Decision:

- \* Due process is flexible concept
- \* Proceeding needs only to be “essentially” fair.
- \* No single unchanging test to apply.
- \* Balance private interest vs. public interest.
- \* Public interest includes fiscal and administrative burdens.

# CARILLON

- \* PARTIES VS. PARTICIPANTS
  - \* PARTIES TO LAND USE CASE = PETITIONER & CITY
  - \* Greater process due to parties than participants.
- 

# CARILLON

- \* Party-Direct interest affected by official action.
- \* Party must be able to present evidence, cross-examine witnesses and be informed of all facts upon which Commission acts.

# Carillon

- \* Public Interests / Rights – QJ hearings (such as rezonings) are open to public participation.
- \* A participant is entitled to some due process. How much depends upon function of proceeding and nature of interests affected.
- \* Florida law does not require that all participants be allowed to cross-examine witnesses.



# Carillon

- \* Parties are the Petitioner and the Local Government.
- \* Not adjoining land owners, neighbors or public at large.
- \* Distinguishes *Sorrento Ranches v. Venice* where 2d DCA made broad statement that the property owners should have been allowed to cross-examine, because unclear whether they were adjoining or in area to be rezoned.

# Carillon

- \* Impractical to allow all 25 public speakers to cross-examine
- \* BCC had a procedure by which witnesses can be questioned.

# 2013 Law

- \* The law (s. 286.0114 F.S.) requiring public participation before taking action, does not apply to quasi-judicial hearings.
- \* Quasi-judicial hearings are already covered by their own due process rules (above).