

## **Town of Redington Shores**

### **Virtual Quasi-Judicial Hearing Procedures**

#### **I. Intent**

The intent of these emergency quasi-judicial procedures is to ensure that, during a declared Federal, State, County, or Municipal state of emergency ("Declared Emergencies"), the Town Commission, Planning and Zoning Board, Special Magistrate, and other Town Boards or Authorities conducting Quasi- Judicial Proceedings (as applicable, the "Quasi-Judicial Body"), may still meet to consider and hear various land-use, zoning, and other applications that are required to be considered pursuant to quasi-judicial procedures. These procedures are intended to maintain citizen access to the local government decision-making process for the review of development applications and items requiring quasi-judicial hearings virtually, and do not alter or replace Quasi-Judicial Procedures adopted by Resolution No. \_\_\_\_ (as may be amended from time to time) which control all regular Quasi-Judicial proceedings that take place outside of a Declared Emergency.

#### **II. Applicability**

These procedures shall be utilized during Declared Emergencies where the Quasi-Judicial Body is unable to have a physical quorum present at a specific public place for a public meeting (or determines it is in the best interest of the Town and its residents to conduct the public meeting without a physical quorum). These procedures may also be utilized when a physical quorum is present at a specified public place for a public meeting, but due to the Declared Emergency, public access to the meeting place is limited, and therefore a virtual component of the meeting via Communication Media Technology (CMT) still exists.

#### **III. Definitions**

The following words, terms and phrases, when used in these emergency quasi-judicial procedures and notwithstanding any other definitions in the Town Charter or

Code or other applicable regulations, shall have the meanings ascribed to them in this section:

*Applicant* shall mean the owner of record, the owner's agent , or any person with a legal or equitable interest in the property for which an application for a development order has been made and which is subject to quasi-judicial proceedings, and shall mean the staff of the Town when the application is initiated by the Town.

*Application* shall mean an application for any one of the following development orders or permits:

- (a) Variances.
- (b) Conditional use approvals.
- (c) Plat approvals.
- (d) Site -specific rezonings.
- (e) Site plan approvals.
- (f) Master plan approvals.
- (g) Rezonings.
- (h) Any other site-specific development approval or appeal of a site-specific approval determined to be quasi-judicial in nature by the Town Attorney.
- (i) Recommendations to Town Commission on any quasi-judicial matter.

*Chair* shall mean the Mayor or, in his/her absence, the Vice Mayor of the Town Commission. For any quasi-judicial proceedings before any other Quasi-Judicial Body, the chair or, in his/her absence, the vice-chair presiding over the quasi-judicial proceedings.

*Communications media technology* (CMT) shall mean the electronic transmission of printed matter, audio, full-motion video, freeze-frame video, compressed video, and digital video by any method available, as provided in Section 120.54(5)(b)(2), Florida Statutes.

*Competent substantial evidence* shall mean testimony or other evidence based on (i) personal observation or fact, or (ii) opinion evidence offered by an expert on a matter that requires specialized knowledge, that is relevant to the issue to be decided that a reasonable mind could accept as adequate to support a conclusion.

*Development Order* shall mean the written decision of the Quasi-Judicial Body regarding an application that requires consideration under these quasi-judicial proceedings.

*Ex parte communication* shall mean any written, oral, or graphic communication with a member of the Quasi-Judicial Body, which may relate to or which could influence the disposition of an application, other than those made on the record during a quasi-judicial hearing. This term also includes visiting the site of the application, receipt of expert opinions, and any independent investigations by a member of the Quasi-Judicial Body. The term “Ex parte communication” does not mean a communication between Staff and a member of the Quasi-Judicial Body.

*Expert* shall mean a person who is qualified in a subject matter by knowledge, skill, experience, training, or education.

*Material fact* shall mean a fact that bears a logical relationship to one or more issues raised by the application or the laws and regulations pertaining to the matter requested by the application.

*Participants* shall mean members of the general public who offer testimony at the Virtual Quasi-Judicial Hearing for the purpose of being heard on an Application and does not include the Applicant or the Applicant’s Experts, and does not include representatives of governmental agencies.

*Party or Parties* shall mean the Applicant and Staff.

*Virtual Quasi-Judicial Hearing* shall mean a virtual hearing held by the Quasi-Judicial Body to adjudicate the rights of an Applicant on an application listed in the section above, by means of a hearing which is conducted utilizing CMT and comporting with these emergency procedures and due process requirements.

*Relevant evidence* shall mean evidence which tends to prove or disprove a fact that is material to the determination of the application.

*Staff* shall mean members of the Town staff and authorized third-party agents of the Town.

#### IV. Ex Parte Communications

A. This rule shall govern ex parte activities by elected and appointed officials with respect to matters on which quasi-judicial action may be taken by the Town Commission or another Quasi-Judicial Body.

B. The substance of any ex parte communication or other ex parte action involving a Council Member or appointed Board Member which relates to quasi-judicial action pending before the Council Member or Board Member shall not be presumed prejudicial to the action if the subject of the communication and the identity of the person, group or entity with whom the communication or action took place is disclosed pursuant to this rule, and made a part of the record before final action on the matter.

C. Any person not otherwise prohibited by statute, charter provision or ordinance may discuss with any Member of the Town Commission or another Quasi-Judicial Body the merits of any Application on which quasi-judicial action may be taken by the Commission or Board Member, provided that the communication is disclosed pursuant to the provisions of this rule.

D. A Commission Member or Board Member may conduct investigations and site visits and may receive written expert opinions regarding a quasi-judicial action pending before them. Such activities shall be disclosed and made part of the record pursuant to this rule.

E. Disclosure made pursuant to this rule shall occur in such a manner that persons who have opinions contrary to those expressed in the ex parte communication or action are given a reasonable opportunity to refute or respond to the communication or action. Any communication or action subject to this rule, other than a written communication, shall be disclosed either in writing or verbally, and must be made before or during the public meeting at which a vote is being taken on such matter.

F. A Commission Member or Board Member may read any written communication from any person regarding a pending Application. However, a written communication that relates to an Application pending before the Commission Member or Board Member shall not be presumed prejudicial to the action, and such written communication shall be made part of the record before final action on the matter.

G. Discussions between a Commission Member or Board Member and Town Staff are deemed not to be ex parte communications subject to this rule.

V. General Procedures

A. When an Application has progressed to the point of scheduling a quasi-judicial hearing (as determined by the Town), Applicants shall choose either (i) delaying consideration of their application and proceeding with the public hearing, after the Declared Emergency has ended, at a meeting that does not utilize CMT; or (ii) proceeding during the Declared Emergency, while the Town is utilizing CMT to conduct a Virtual Quasi-Judicial Hearing, with consideration of their Application pursuant to the Town's adopted CMT procedures. Such election by an Applicant shall be provided in writing. If the Applicant elects to proceed during the Declared Emergency, the Applicant must waive, in writing, its right to appeal on the basis of any procedural due process issues which could arise during a Virtual Quasi-Judicial Hearing utilizing CMT.

B. The Virtual Quasi-Judicial Hearing shall be held via CMT, and, at the sole discretion of the Quasi-Judicial Body, may include an in-person component.

- C. Each Party shall have the right to call and examine witnesses, to introduce exhibits, to cross-examine Participants (and opposing witnesses, if any) on any testimony or evidence presented by such Participant (or opposing witness), and to rebut evidence.
- D. Staff shall have the responsibility of presenting the Application on behalf of the Town. The Staff report on the Application shall be made available to the Applicant, and the Town Commission or Quasi-Judicial Body no later than five (5) days prior to the Virtual Quasi-Judicial Hearing on the Application.
- E. All written communication received by the Commission Members or Staff concerning an Application, the Staff report on the Application, any petitions or other submissions from the public, and all other documents pertaining to the Application received prior to the hearing shall become a part of and shall be filed in the official file for the Application, which shall be maintained by Staff. The Town of Redington Shores Comprehensive Plan and the Town Code of Ordinances shall be deemed to be part of the official file. The contents of the official file shall be deemed entered in the record of the Virtual Quasi-Judicial Hearing on the Application without any action.
- F. The agenda for the meeting at which the Virtual Quasi-Judicial Hearing is scheduled to take place shall explain the procedures for accessing the Virtual Quasi-Judicial Hearing. A copy of the meeting agenda, along with the agenda materials for the Application shall be posted on the Town's website.
- G. The Applicant shall submit all supplemental materials, presentations, and statements related to the Application to the Town in electronic format no later than two (2) business days prior to the date of the Virtual Quasi-Judicial Hearing, which shall be provided to the Quasi-Judicial Body for review with the other hearing materials.
- H. Members of the public that desire to submit comments regarding the Application to be heard at the Virtual Quasi-Judicial Hearing may submit their comments, pursuant to the Technical Information for CMT meetings provided in Section 8 below.

I. A copy of these Virtual Quasi-Judicial Hearing Procedures shall be posted on the Town's website.

J. Notice requirements as contained in the Town Code of Ordinances and Florida Statutes shall apply to the Virtual Quasi-Judicial Hearing. Any notice for a matter to be heard at a Virtual Quasi-Judicial Hearing shall include a reference to the Virtual Quasi-Judicial Hearing Procedures and provide the method and access to view and provide comment during the meeting at which the Virtual Quasi-Judicial Hearing will occur.

K. In the event the Town's CMT malfunctions during the Virtual Quasi-Judicial Hearing, the Town shall use its best efforts to provide notice to all parties as to the date and time of the continuation of the Virtual Quasi-Judicial Hearing. Malfunction of an individual's CMT equipment, including, but not limited to, computers and/or telephones, shall not require continuation of the Virtual Quasi-Judicial Hearing, provided the Town's CMT continues to function.

VI. Virtual Quasi-Judicial Hearing Procedures

A. The Virtual Quasi-Judicial Hearing shall, to the extent possible, be conducted as follows:

1. The Mayor, Chair or Town Attorney shall read a statement at the beginning of the Virtual Quasi-Judicial Hearing portion of the meeting agenda, which shall outline the procedure to be followed.

2. All Parties and Participants shall be collectively sworn by oath or affirmation. This will be done at the beginning of each hearing on a Quasi-Judicial item. It shall be the obligation of a speaker, prior to offering any testimony, to advise the Body if they have not been sworn in so that they may be so sworn prior to offering testimony.

3. The Mayor/Chair shall call for disclosure of ex parte communications. Such disclosures shall be made in accordance with these procedures.

4. The order of the presentation shall be as follows, unless the Quasi-Judicial Body agrees to a different order, taking proper consideration of fairness and due process:

- a) Staff shall present a brief synopsis of the Application; introduce any appropriate additional exhibits, materials or information, which have not already been transmitted to the Quasi-Judicial Body along with the agenda materials, as Staff desires; summarize issues; and may provide a recommendation on the Application. Staff may also introduce and present the testimony of any Experts or other witnesses at the hearing.
- b) The Applicant shall make its presentation, including offering any exhibits, and introduce and provide the testimony of any Experts or other witnesses. Such presentation shall be a total of fifteen (15) minutes without interruption.
- c) The Town Clerk or Staff, as applicable, shall advise that any comments in support of, or in opposition to, the Application that were timely received prior to the Virtual Quasi-Judicial Hearing were made available for review and made a part of the record.
- d) Any other Participants may be recognized and may submit their comments pursuant to the Technical Information for CMT meetings provided in Section 8 or offer in-person comments if the public meeting also has an in-person component.
- e) Staff and the Applicant may cross-examine any witnesses presenting spoken testimony and respond to written submissions.
- f) Members of the Quasi-Judicial Body, through the Mayor/Chair, may ask any questions of the Staff or Applicant (and any of their witnesses), or Participants.
- g) Staff allowed its final response and summary.
- h) The Applicant shall be allowed to make its rebuttal presentation, which shall be limited to five (5) minutes.



i) Members of the Quasi-Judicial Body shall have a final opportunity to comment or ask questions of either Party or any Participant.

j) The Mayor/Chair shall close the public comment portion of the meeting on such item upon the conclusion of the last appropriate speaker's comments.

5. The Mayor/Chair shall keep order, and without requiring an objection, may direct a Party conducting any cross-examination to stop a particular line of questioning that merely harasses, intimidates or embarrasses the individual being cross-examined, is unduly repetitious, not relevant, or beyond the scope of the testimony by the individual being cross-examined.

6. After the presentations, and at the conclusion of any continuances, the Quasi-Judicial Body shall deliberate on the Application. The Quasi-Judicial Body's decision(s) must be based upon Competent Substantial Evidence.

B. The Quasi-Judicial Body may, on its own motion or at the request of any Party, continue the hearing to a fixed date, time, and place, and all requests for continuance shall be granted or denied at the discretion of the Quasi-Judicial Body.

C. At any time prior to the commencement of the hearing, the Applicant may request, in writing, to withdraw an Application.

## VII. Virtual Quasi-Judicial Hearing Record

The Town Clerk shall maintain custody of all recordings of testimony, evidence, and documents submitted into evidence at the Virtual Quasi-Judicial Hearing in the same manner as for non-emergency quasi-judicial hearings.

### A. Technical Information for CMT Quasi-Judicial Hearings

The notice of Virtual Quasi-Judicial Hearing will provide that instructions, as detailed below, for accessing the meeting using CMT will be available on the Town's website and available upon request from the Town Clerk.

B. Participating in the Virtual Quasi-Judicial Public Meeting:

1. To participate as an Attendee in the Virtual Quasi-Judicial Meeting using computer access or your smartphone, register via your internet browser through the link provided on the Town's webpage and in the Virtual Meeting Notice. Virtual meeting attendees will be able to see Staff's meeting presentation materials and the Town Commission members and hear other persons when speaking. In meetings of other Quasi-Judicial Bodies, virtual meeting attendees will be able to see Staff's meeting presentation materials and hear the members of other Quasi-Judicial Bodies and other persons when speaking.

2. To provide real-time comment using Zoom on a Quasi-Judicial agenda item, you may electronically raise your hand (as described below) to provide your name and address where you reside and be provided an opportunity to give spoken comment or ask a question. Spoken comments will be limited to three (3) minutes.

3. To provide real-time comment using the telephone, if such meeting is being conducted solely via CMT (as described below), you may dial \* 6 to unmute yourself and offer spoken comment or ask a question when directed by Staff to do so. Spoken comments will be limited to three (3) minutes.

4. During the meeting, individuals will be provided only one opportunity to provide comment upon each specific Quasi-Judicial agenda item.

5. If you wish to provide pictures, or similar presentations, or any materials to the Quasi-Judicial Body, please provide copies via email to the email address provided in the published notice of the meeting no later than 48 hours prior to the start of the meeting.

C. Listening to or Viewing the Virtual Quasi-Judicial Public Meeting:

1. To listen to the meeting on any phone, dial the conference number given in the meeting notice and enter the conference code when prompted.

2. Watch the meeting online via Zoom by using the link provided in the meeting notice and on the Town's website.

D. Submitting Comments via Email:

If you wish to comment via email, you may do so by emailing your name and address where you reside and agenda item number or description, as applicable, and your comment no later than four (4) hours prior to the scheduled starting time for commencement of the meeting. Email your comments to the email address provided in the published meeting notice. Email comments will be reviewable by the Quasi-Judicial Body as part of the meeting record.

E. Zoom Instructions for Virtual Town of Redington Shores Meetings

1. Visit the website address provided on the Town's website and in the Virtual Meeting Notice to register to be an Attendee for the meeting OR download the Zoom app using a smartphone.

a) Mute: Attendees will be automatically placed in Listen Only (mute) mode during the meeting. The meeting organizer (Staff) will control mute/unmute.

b) Raise Hand: Attendees will be able to raise their hand, which the meeting organizer can use to allow attendees to speak at the appropriate time during the meeting, as described above.

c) Mute/Unmute: When the meeting organizer recognizes you to speak during the meeting, select the UNMUTE button on your computer, give your name and address, whether you have taken the oath to tell the truth, and offer your comments, which will be limited to three (3) minutes.

2. System Requirements:

The latest versions of an internet browser should be used, whether it is Google Chrome, Firefox, or Safari. If Internet Explorer is used, version 9 or 10 is recommended as the earlier versions are only partially supported, which may cause some issues when logging into a meeting.

F. Telephone Comments

If the virtual meeting is being conducted solely by CMT (meaning there is no in-person component), viewers may offer comment by calling the phone number provided in the Virtual Meeting Notice and on the Town's website. When the Mayor/Chair asks for comment for anyone on the telephone, press \* 6 to unmute yourself, wait for an opening and then state your name, address and whether you have taken the oath to tell the truth. You may then offer your comments, which shall be limited to three (3) minutes.