

Board of County Commissioners Agenda Request

Date of Meeting: January 3, 2012

Date Submitted: December 20, 2011

To: Honorable Chairman and Members of the Board

From: Deborah Minnis, County Attorney
David Weiss, Assistant County Attorney

Subject: **Public Hearing:** Adoption of Ordinance No. _____ to implement the provisions of Section 286.0115, Florida Statutes, relating to ex parte communications with local public officials related to pending quasi-judicial actions

Statement of Issue:

This item seeks Board direction regarding the adoption of an ordinance to implement the provisions of Section 286.0115, Florida Statutes, relating to the removal of the presumption of prejudice which arises from ex parte communications with local public officials which are related to quasi-judicial actions pending before such officials.

Background:

Unless prohibited by statute, charter, or ordinance, any person may discuss with any local public official the merits of any matter on which action may be taken by the board on which the local official sits. However, under Florida law, such private or off-record "ex parte communications" are generally presumed to prejudice or harm a person whose rights are adversely affected by a decision of such board which involves the application of policy, rule, or law to a specific request or application (a "quasi-judicial" decision). Therefore, if a person who is adversely affected by the board's decision appeals the decision to a higher authority (judicial or administrative review) and reveals an ex parte communication, the higher authority will reverse the board's decision and remand the matter for further proceedings unless the board proves that the communication did not impact the board's decision.

Analysis:

Section 286.0115, Florida Statutes, authorizes, but does not require, counties to adopt an ordinance or resolution that removes the presumption of prejudice from ex parte

communications with local public officials by establishing a process for disclosing such ex parte communications. Adopting this ordinance would meet the criteria set forth in Section 286.0115, Florida Statutes, and, provided the disclosure procedures are followed, would remove the automatic presumption of prejudice arising from ex parte communications between citizens and board members regarding pending quasi-judicial action. Moreover, by adopting this ordinance establishing a process for disclosure of ex parte communications, citizens who were not parties to the communications and who have positions contrary to those communicated will have an opportunity to voice those opinions before the vote is taken on the matter. In addition, adopting this ordinance would preclude the board from imposing prohibitions on ex parte communications regarding quasi-judicial proceedings on local government land use matters (the board would still be able to impose, by ordinance, prohibitions on ex parte communications regarding other matters if desired).

Fiscal Impact:

None.

Options:

1. Approve the Ordinance.
2. Disapprove the Ordinance.
3. Instruct counsel and staff to revise the Ordinance based on further instructions by the Commission.
4. Board Direction

County Administrator's Recommendation:

Option 4. Board Direction

Attachment:

Copy of proposed Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA PROVIDING, PURSUANT TO SECTION 286.0115, FLORIDA STATUTES, A DEFINITION OF LOCAL PUBLIC OFFICIAL; REMOVING, PURSUANT TO SECTION 286.0115, FLORIDA STATUTES, THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS RELATED TO MATTERS OTHER THAN QUASI-JUDICIAL PROCEEDINGS ON LOCAL LAND USE MATTERS, BY ESTABLISHING A PROCESS TO DISCLOSE EX PARTE COMMUNICATIONS WITH SUCH OFFICIALS; ESTABLISHING THE PROCEDURES AND PROVISIONS OF SECTION 286.0115(2), FLORIDA STATUTES, FOR REMOVING THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS RELATED TO QUASI-JUDICIAL PROCEEDINGS ON LOCAL GOVERNMENT LAND USE MATTERS; PROVIDING A TITLE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS the Gadsden County Board of County Commissioners seeks to remove the presumption of prejudice from ex parte communications with local public officials by establishing a process to disclose ex parte communications with such officials.

WHEREAS the Gadsden County Board of County Commissioners seeks to remove the presumption of prejudice from ex parte communications with local public officials related to quasi-judicial proceedings on local land use matters.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA:

SECTION 1. CREATION OF ORDINANCE REMOVING THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS.

(1) As used in this ordinance, the term "local public official" means any elected or appointed public official holding a County office who recommends or takes quasi-judicial action as a member of a board or commission. The term does not include a member of the board or commission of any state agency or authority.

(2) Any person not otherwise prohibited by statute or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the local public official is a member.

(3) Ex parte communications related to matters other than quasi-judicial proceedings on local government land use matters. Adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with public officials related to matters other than quasi-judicial proceedings on local government land use matters:

(a) The substance of any ex parte communication with a public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made part of the record before final action on the matter.

(b) A local public official may read a written communication from any person. However, a written communication which relates to quasi-judicial action pending before a local public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

(c) Local public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.

(d) Disclosure made pursuant to subparagraphs (a), (b), and (c) must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject local public officials to part III of chapter 112, Florida Statutes, for not complying with this paragraph.

(3) Ex parte communications related to quasi-judicial proceedings on local government land use matters.

(a) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decision-making body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decision-making body, and may be requested to respond to questions from the decision-making body, but need not be sworn as a witness, is not required to be subject to cross-examination, and is not required to be qualified as an expert witness. The decision-making body shall assign weight and credibility to such testimony as it deems appropriate.

(b) A party or party-intervenor in a quasi-judicial proceeding on local government land use matters, upon request by another party or party-intervenor, shall be sworn as a witness, shall be subject to cross-examination by other parties or party-intervenors, and shall be required to be qualified as an expert witness, as appropriate.

(c) In a quasi-judicial proceeding on local government land use matters, a person may not be precluded from communicating directly with a member of the decision-making body by application of ex parte communication prohibitions. Disclosure of such communications by a

member of the decision-making body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decision-making body.

(d) All decisions of the decision-making body in a quasi-judicial proceeding on local government land use matters must be supported by substantial, competent evidence in the record pertinent to the proceeding, irrespective of such communications.

(4) This ordinance does not restrict the authority of any board or commission to establish rules or procedures governing public hearings or contacts with local public officials.

SECTION 2. TITLE.

(1) The title of this ordinance shall be: "Access to local public officials; quasi-judicial proceedings."

SECTION 3. SEVERABILITY.

In accordance with Section 1-9 of the Gadsden County Code of Ordinances, the sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance and all provisions are severable so that if any section, subsection, paragraph, sentence, clause or phrase of this Ordinance is declared unconstitutional or invalid by a valid judgment of a court of competent jurisdiction, such judgment shall not affect the validity of any other section, subsection, sentence, clause and phrase of this Ordinance, for the Board of County Commissioners declares that it is its intent that it would have enacted this Ordinance without such invalid or unconstitutional provision(s).

SECTION 4. EFFECTIVE DATE; FILING WITH THE DEPARTMENT OF STATE.

This ordinance shall take effect upon filing with the Department of State.

DULY PASSED AND ADOPTED BY a vote of _____ to _____ on the _____ day of _____, 2011.

BOARD OF COUNTY
COMMISSIONERS OF GADSDEN
COUNTY, FLORIDA

By: _____
SHERRIE D. TAYLOR, Chairman

Nicholas Thomas
Clerk of the Circuit Court

NOTICE OF INTENT

NOTICE IS HEREBY GIVEN to all concerned that the Board of County Commissioners of Gadsden County, Florida, intends, at its regularly scheduled meeting, at the Gadsden County Governmental Complex, 9-B East Jefferson Street, Quincy, Florida, at 6:00 p.m. on the 3rd day of January, 2012, to consider adoption of an ordinance entitled:

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF GADSDEN COUNTY, FLORIDA PROVIDING, PURSUANT TO SECTION 286.0115, FLORIDA STATUTES, A DEFINITION OF LOCAL PUBLIC OFFICIAL; REMOVING, PURSUANT TO SECTION 286.0115, FLORIDA STATUTES, THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS RELATED TO MATTERS OTHER THAN QUASI-JUDICIAL PROCEEDINGS ON LOCAL LAND USE MATTERS, BY ESTABLISHING A PROCESS TO DISCLOSE EX PARTE COMMUNICATIONS WITH SUCH OFFICIALS; ESTABLISHING THE PROCEDURES AND PROVISIONS OF SECTION 286.0115(2), FLORIDA STATUTES, FOR REMOVING THE PRESUMPTION OF PREJUDICE FROM EX PARTE COMMUNICATIONS WITH LOCAL PUBLIC OFFICIALS RELATED TO QUASI-JUDICIAL PROCEEDINGS ON LOCAL GOVERNMENT LAND USE MATTERS; PROVIDING A TITLE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

INTERESTED PARTIES MAY APPEAR AT THE MEETING AND BE HEARD WITH RESPECT TO THE PROPOSED RESOLUTION. IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE BOARD OF COUNTY COMMISSIONERS WITH RESPECT TO THIS MATTER, HE WILL NEED A RECORD OF THE PROCEEDINGS, AND FOR SUCH PURPOSE, HE MAY NEED TO ASSURE THAT A VERBATIM RECORDING OF THE PROCEEDING IS MADE, WHICH RECORD INCLUDES TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

The proposed ordinance is available for public inspection at the Office of the Clerk, Gadsden County Courthouse, 10 E. Jefferson St., Quincy, Florida.

BOARD OF COUNTY COMMISSIONERS OF
GADSDEN COUNTY, FLORIDA

By: _____
Nicholas Thomas, Clerk

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