



# CLEARWATER CITIZENS GUIDE

to Community Development Board Hearings



2022

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## **INTRODUCTION**

This guide offers a step-by-step look into the workings of the CDB and its procedural hearings to assist affected parties and the public when participating in the process.

### **Who serves on the CDB?**

The CDB consists of seven members and one alternate, all residents of the city, who are appointed by City Council to serve four-year terms. As required by the Community Development Code, the board includes members qualified and experienced in the fields of architecture, landscape architecture, planning, engineering, construction, land use law, or real estate.

### **What does the CDB do?**

Sec. 163.3174, F.S., each local government is required to establish, by ordinance, a Local Planning Agency (LPA), to assist in the development and revision of the city's Comprehensive Plan and the Community Development Code (land development regulations). The CDB serves in this role for the city, and as the LPA, the board is responsible for making recommendations to the City Council regarding development of, or changes to, the city's Comprehensive Plan and Code, as well as a variety of other items such as Future Land Use Map and Zoning Atlas amendments, other special area plans and development agreements, to ensure that they are consistent with, and serve to implement, the city's Comprehensive Plan.

In addition to its role as the LPA, the board also decides certain site plan applications known as Level Two Approvals or Flexible Development (FLD) applications. These applications typically involve flexibility to certain development standards as outlined in the code, or review of a use that the Development Review Committee (DRC) is not authorized to permit. To grant this "flexibility", the CDB must find that there is competent substantial evidence that the proposed development meets both the relevant flexibility criteria for the use and the general applicability criteria found in section 3-914.A of the Code.

The guide will later address the criteria for competent and substantial evidence.

### **What types of hearings does the CDB conduct?**

The CDB conducts two different types of hearings: quasi-judicial and legislative hearings. The difference between the two categories is that legislative decisions establish new law that will govern future applications, while quasi-judicial decisions are the application of existing law to the particular facts of a case. Those site plan applications requesting review and approval by the CDB, as described above, are called Level Two cases because the CDB makes the decision whether to approve or deny the application.

Level Three hearings are those for which the CDB makes a recommendation regarding approval or denial to the City Council which makes the final decision. Examples of Level Three applications include Future Land Use Map and Zoning Atlas amendments, amendments to the city's Comprehensive Plan, Community Development Code, other special area plans, and development agreements.

### **What are Level One, Level Two and Level Three approvals?**

You may hear the terms Level One, Two or Three approvals used when discussing applications. These terms refer to what "level" of approval an application requires. For example, some requests may meet the minimum standards established in the Code for a specific use within a zoning district, and others may be requesting flexibility that the Code authorizes the Community Development Coordinator (Planning and Development Director) to approve. These are called Level One approvals because staff is granted the authority make a determination on the request.

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When a site plan application requires a public hearing by the CDB, it is known as a Level Two approval because the CDB makes the decision whether to approve or deny the request, whereas Level Three approvals are those for which the CDB makes a recommendation regarding approval or denial to the City Council which makes the final decision.

### **What is a case?**

Because there are a wide variety of applications received for different levels of approval each month, the city uses a tracking system to identify each application. Case numbers assigned to development applications are shorthand for the type of application, the year and month of application, and how many of that type have been received in that calendar year. An example of a case number is FLD2020-01001. Common case types considered by the CDB are Flexible Development (FLD), Future Land Use Map amendment (LUP), and Zoning Atlas amendments (REZ).

Because case numbers provide a unique identifier for an application, it is included on all notices and in staff reports, as well as on the CDB agenda, and it can be used to look up plans and related documents online that are associated with the application.

### **Who should attend?**

If there is a matter under consideration that is important to you and will impact you in a significant way, then you should consider participating in the hearing. You may want to consider employing a land use attorney who will understand what standards apply and what type of evidence will be persuasive in front of the board. The Florida Bar Lawyer Referral Service may be able to assist you with locating an attorney should you decide you would like to consult with one about an application. Visit [lrs.floridabar.org](http://lrs.floridabar.org) for more information. Note, the city does not provide recommendations on attorneys.



## PREPARING FOR A CDB HEARING

You may have received a notice in the mail regarding a proposal if your property is located within 200 feet of a subject parcel, or you may have seen a yellow notice sign posted on the subject property and want to know more. This section will explain how to see what is on the upcoming CDB agenda and how to review the application and supporting documents for the development proposal.

The Code establishes that notices (mailed and posted) shall be provided no less than 10 days prior to the CDB meeting. A staff report with recommendation shall be delivered to the CDB members and be available to the public at least five days in advance of the hearing. Sign up to receive email notifications each month when the CDB agenda is posted online at [myclearwater.com](http://myclearwater.com). Staff strives to post the agenda shortly after it is known which applications are proceeding to the Board, and sends notifications out to those who opt-in to this service.

### How do I know what the CDB will be discussing?

The first step in preparing for a CDB meeting is to obtain an agenda. The agenda outlines cases the Board will be hearing and the order the cases will be heard.

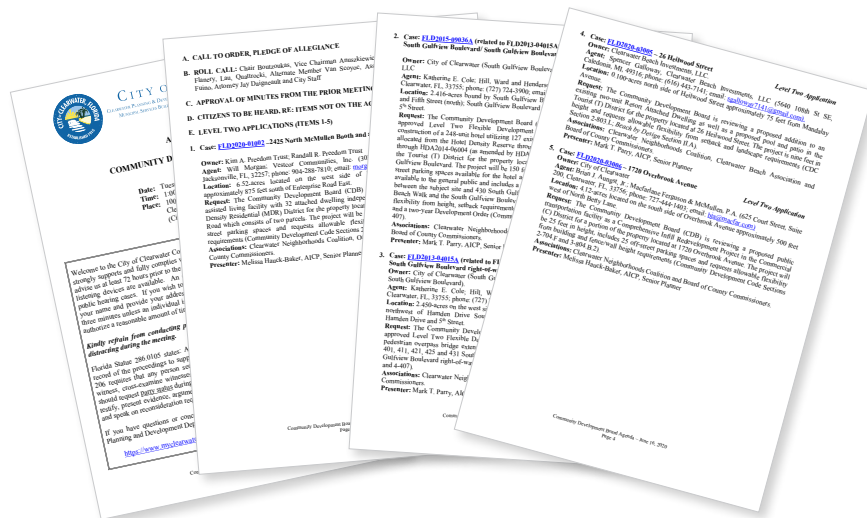
### How do I get a copy of the agenda?

CDB meeting agendas can be found prior to the meeting.

The online agenda has a hyperlink for each case that links to [epermit.myclearwater.com](http://epermit.myclearwater.com). Selecting the case from the agenda will take you directly to the record for that case. To view plans and any other associated documents, select Record Information and then Attachments.

On the day of the meeting, copies of the agenda are also available in City Council chambers. All case records are also accessible online at [www.myclearwater.com/communitydevelopmentboard](http://www.myclearwater.com/communitydevelopmentboard).

For more information, call 727-562-4567.



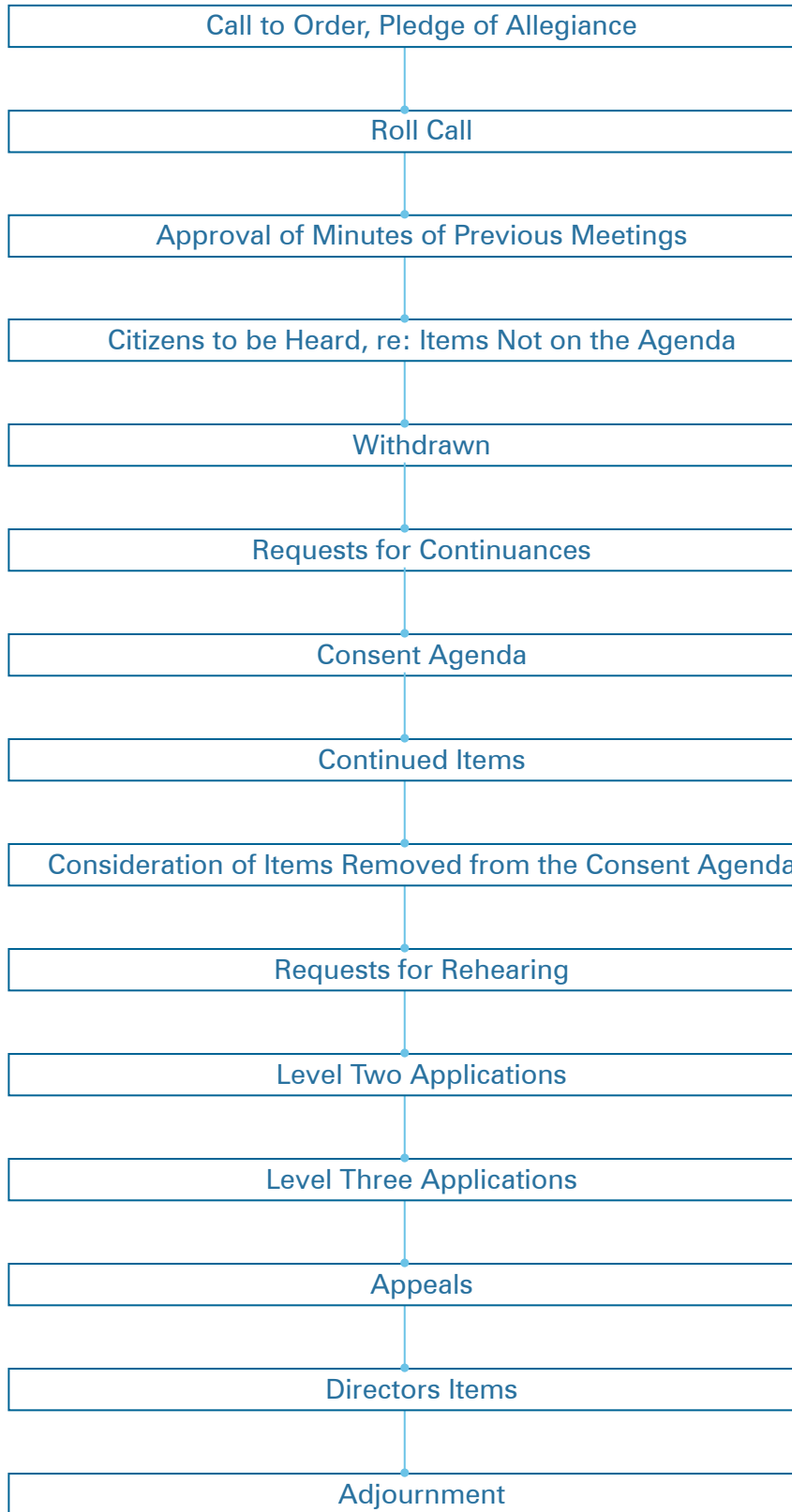
### Do I need to have an attorney?

While an attorney is not mandatory, one may be helpful depending on your individual circumstances. With or without a lawyer you should prepare and organize your case prior to participating at the hearing. The best way to ensure this is by reviewing the case in advance of the hearing. The development application and all relevant documents, including the staff report when it is finalized is available online through [epermit.myclearwater.com](http://epermit.myclearwater.com). The case number assigned to the application is found on in the public notice of the hearing in the newspaper or mail, as well as on the agenda.

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## ORDER OF MEETING:

Meetings are conducted in the following order:





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## GETTING STARTED

### The Call to Order and Initial Actions

- When you arrive at the board meeting, take a seat and wait for the hearing to begin.
- The Chairperson will call the meeting to order and begin by conducting the Pledge of Allegiance.
- The Chairperson will introduce him or herself and the other members of the board, then ask for anybody who is planning to speak to rise and be sworn in by the City Clerk.
- The board will then review and approve the minutes from the previous meeting before commencing with the current agenda.
- The Chairperson will next ask if anyone is present to speak on anything that is not listed on the agenda. This simply means that if you have something to say about anything that is not on the agenda, now is your time to say it. You will be limited to three minutes and while the CDB will listen to what you have to say, the board will not take any action.
- Prior to proceeding with the first case, the Chairperson will also note if any cases have been withdrawn for the record. The board will also consider any requests for continuances of cases.

### Consent Agenda

- The board will then consider the consent agenda, any application except development agreements that are not contested by city staff or the applicant, and no other person has submitted an objection to the case. Additionally, the applicant has agreed to any conditions of approval. Therefore, the board can approve it without an evidentiary presentation.
- The consent agenda is available online the Monday prior to the meeting, and is also available in City Council chambers during the meeting. Because the consent agenda items are passed without an evidentiary presentation, it is important to be on time to the hearing if you wish to contest a case.
- Any board member and anyone from the public have the right to remove any case from the consent agenda.
- The Chairperson will go through each case on the consent agenda and ask if there is anyone on the board or in the audience who wishes to remove it from the consent agenda, either because of an objection or for questions. If you wish to contest any case on the consent agenda, you must speak up at this time.
- Items remaining on the consent agenda will be approved by the Board (Level Two) or the Board will recommended to City Council that they be approved (Level Three).

### Items not on the Consent Agenda

- After the board has voted on the consent agenda, the Chairperson will move to the next item on the agenda, which are any cases that the board had approved for continuance at a prior meeting.
- Next, the board will hear any cases removed from the consent agenda. The board hears Level Two applications first, then Level Three cases.
- After acting on any cases removed from the consent agenda, the board will consider any requests for rehearing of cases considered at the prior regularly scheduled board meeting. Such requests may be made by the Planning and Development staff, applicant, or interested party. The CDB may grant a rehearing only if the board determines that the decision was based on a mistake, fraud or misrepresentation, pursuant to Section 4-206.H of the Code. The rehearing would take place at a future CDB meeting, after proper noticing has taken place.
- Next, the board will hear any applications that were not on the consent agenda prior to the meeting. Like with items removed from the consent agenda, the board hears Level Two applications first, then Level Three cases.

**NOTE:** The remainder of this document will explain the procedures for the two types of hearings. The steps detailed apply regardless of whether a case was initially proposed to be on the consent agenda and requested to be removed from consent or it was not previously on consent.





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## QUASI-JUDICIAL HEARINGS – LEVEL TWO CASES

### What are quasi-judicial hearings?

A quasi-judicial decision is one that requires the Hearing Body (the Community Development Board) to find facts and exercise discretion when applying the standards of an ordinance (the Community Development Code) to a specific situation. During a quasi-judicial hearing, the CDB must hold an evidentiary hearing and make its decision based on the written and oral evidence presented. Unlike legislative decisions (like Comprehensive Plan amendments), a quasi-judicial decision must be based solely on the evidence presented and cannot be based on opinions of members of the CDB.

### What is fundamental fairness in quasi-judicial hearings?

Fundamental fairness is an important concept in quasi-judicial hearings because CDB hearings are not a court of law and as such normal court rules do not apply. Fundamental fairness is usually met when the applicant and the public at large are given notice of the hearing and the opportunity to be heard. In practice, this means that the city, the applicant, and those granted party-status are given a chance to testify, present documentary evidence, and cross examine witnesses. The general public may still provide comments regarding an application but will not have the above rights.

### When can participants speak and present evidence?

The quasi-judicial process provides structure for who can speak, when and for how long; who can present documentary evidence, how to present such evidence, and the general order in which matters proceed.

### What is competent and substantial evidence?

When making decisions, the CDB can only consider “competent” and “substantial” evidence that is presented to them. Initially, the burden is on the applicant to produce such relevant evidence that would lead a reasonable mind to the conclusion that the development request meets the Code requirements.

**Competent** means that the person testifying is qualified to give advice on that subject.

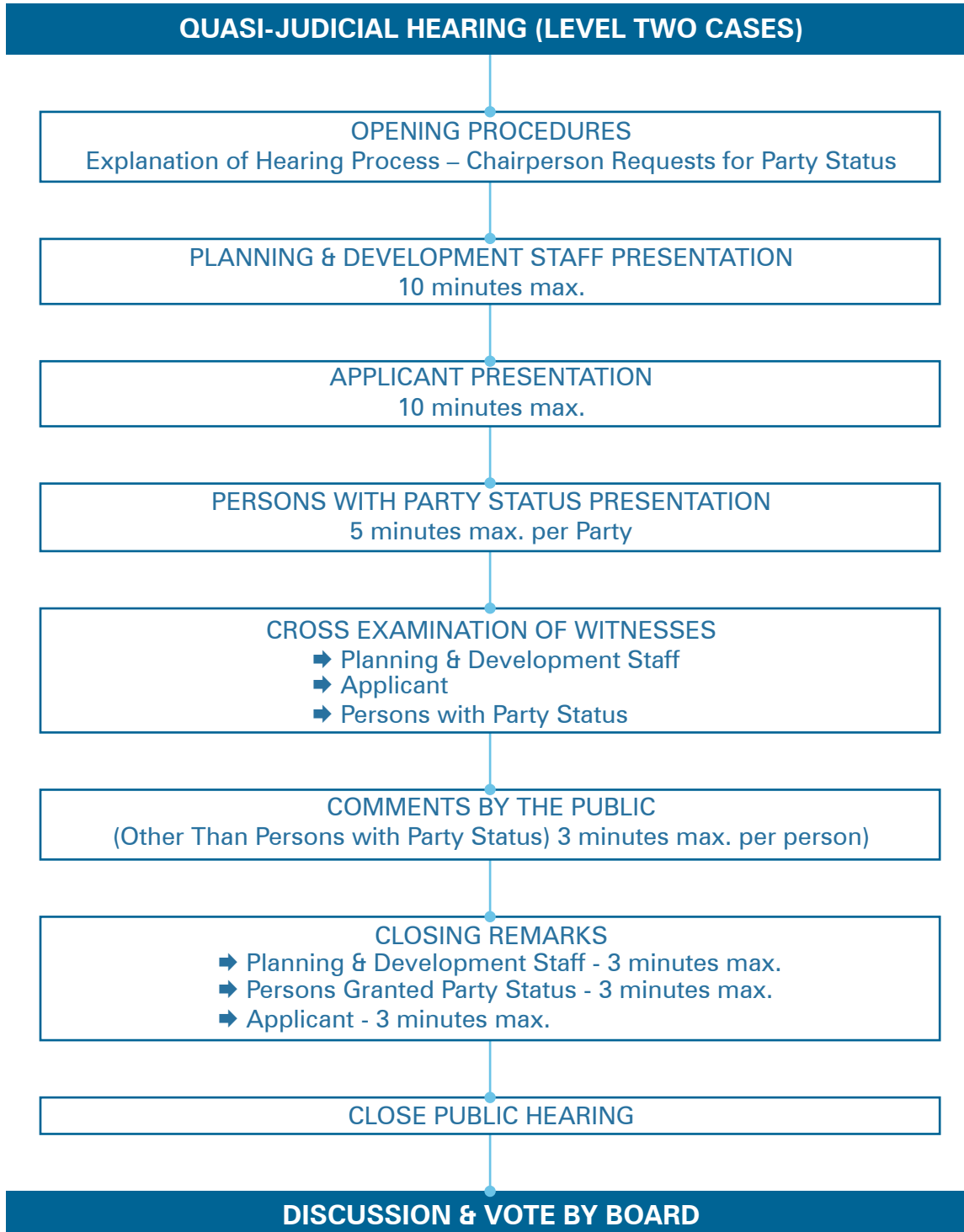
- If someone with party status plans to talk or present an expert to testify about something that requires specialized knowledge, such as traffic, property values, or environmental impacts, the resume of the person testifying to the Board must be presented outlining an expert’s qualifications, such as an academic degree or specialized training.
- If someone with party status is not an expert in a subject, he or she can still testify but only to factual matters or to elements of a case that would not require specialized training or specific academic degrees.

**Substantial** means that what is presented is sufficient, relevant, and credible enough on which to base a decision.

- Taken together, the law construes “competent, substantial evidence” to mean evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached.
- Since the CDB’s decisions are based on the competent and substantial evidence placed before the board, and on nothing else, popular support will not win the day. Bringing large crowds of people, staging demonstrations, or disrupting proceedings with loud noises, cheers, or other supportive or antagonistic statements is not appropriate and ultimately ineffective.

### Why are these procedural rules important?

These procedural rules are important to ensure that all parties have an opportunity to have their voices heard and to ensure that hearings are conducted in a way that is productive and efficient for everybody involved.



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## ACQUIRING PARTY STATUS

- When a quasi-judicial case that has been removed from the consent agenda is called, the Chairperson will describe the application and identify the applicant for the record. The Chairperson will then ask one of the most important questions affecting your rights: whether anyone attending the hearing wishes to seek “party status”.

- This question is vital to you because in a CDB hearing there are three parties to a case:

 **The city**

 **The applicant**

 **Persons granted party status.**

- Obtaining party status grants more rights than those given to the general public. These rights include the ability to testify, cross-examine witnesses, and appeal the board’s decision.
- When the Chairperson asks if there is anyone seeking party status, interested parties should make their presence known by raising hands.
- Party status will be granted to an individual that demonstrates he or she is a “substantially affected person”.
- A substantially affected person means he or she will be impacted more significantly than the general public if the board grants or denies the application under review. The burden is on the individual or entity requesting party status to prove to the board’s satisfaction that he or she should be granted this request.
- To do so, your request should be made as succinctly as possible. For example:

 **I live next to the proposed development.**

 **I received a notice of this meeting.**

- The board will then take a vote on your request. If the majority votes to approve your request, you will be granted party status and have the following rights:

 **The ability to personally testify.**

 **The ability to present evidence by documentary submittal.**

 **The ability to present witnesses.**

 **The ability to cross-examine another parties’ witness(es).**

 **The ability to present arguments.**

 **The ability to appeal the board’s decision.**

- If your request for party status is denied, you can still participate in the proceedings as the general public, subject to certain limitations.
- While you will be given a chance to speak during the public comment section, time will be limited to three minutes and there will not be cross-examinations. Most importantly, you will not have the right to appeal the board’s decision.



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## TESTIMONY AND EVIDENCE

- The city is the first to testify during a quasi-judicial hearing. The city has 10 minutes to make a presentation about the proposed development and make a recommendation to either approve or deny the application.
- Then the applicant has 10 minutes to present expert witness testimony and evidence to support why the board should approve the application.
- Individuals with party status are next and should bring any documentary evidence for introduction, state they want to introduce the evidence into the record, and wait for instruction. Persons with party status are given five minutes to testify about how the development will impact them and to offer any witnesses or evidence in support of their testimony. A time clock will be on the podium to keep track of time.
- Any documents entered into evidence will be taken, and made part of the official record, but will not be returned.
- It is encouraged to make copies of presentation materials for the board; a good rule of thumb is to bring 15 copies.
- If a person intends to introduce expert witness testimony, the board will require any witness's resume, so be sure to bring 15 copies of that, too. The witness may be seated once testimony presentation is finished.

## CROSS-EXAMINATION

- The next phase of the hearing is cross-examination, which is an opportunity to ask questions of another party's witness regarding their testimony. The questions must be limited to the scope of what was discussed and presented by that party.
- Cross-examination is not an opportunity for providing further testimony. Nor should a person argue with a witness. Note: City employees who did not testify such as the city attorney or board members are not subject to cross-examination.
- The city has the right to cross-examine witnesses first, then the applicant, and then persons granted party status.
- When a person is called for the opportunity to cross-examine, he or she may return to the podium to ask questions of the city's representative, the applicant, or their witnesses. If there are no specific questions, cross-examination can be waived by simply stating: *"I have no questions for the witnesses."*

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## **COMMENTS MADE BY THE PUBLIC**

- Once cross-examination has been waived or concluded and closing remarks have been made, the Chairperson will ask for any public comments.
- This is the opportunity for anyone who did not apply for, or who did not receive party status, to make brief remarks regarding the proposed development.
- Each public comment is limited to 3 minutes and time is up when the Chairperson announces that time has expired.

## **CLOSING REMARKS**

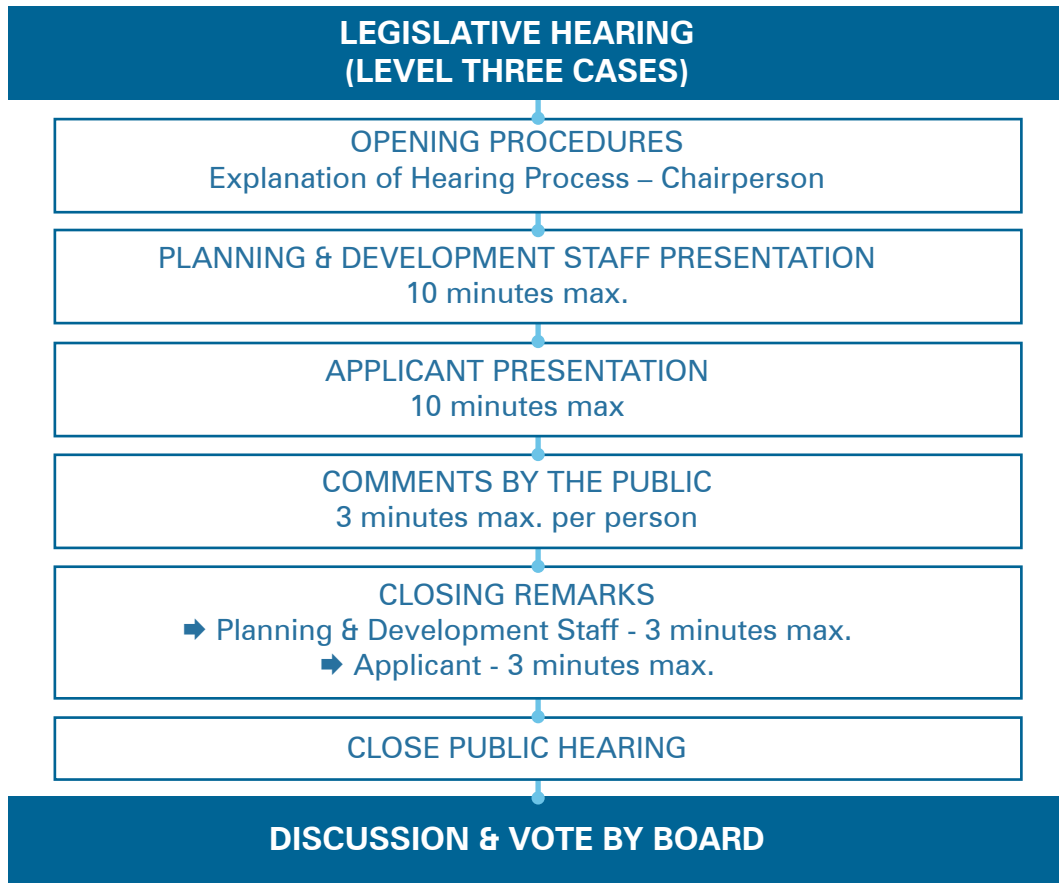
- Finally, each party will have an opportunity to make closing statements. The city will go first, then the applicant, then any person with party status. Each is given three minutes for closing remarks and may also waive them.
- Closing remarks are an opportunity for persons with party status to address anything that a party has said or any evidence that has previously been submitted to make an argument, and should end with a request of the board to either approve or deny the application.
- This is not an opportunity for further testimony. Consequently, evidence introduced during testimony, the city's testimony, the applicant's testimony, or something that was said during cross-examination, should be referenced. If you reference something else, then you are going "outside of the record" which is not appropriate.

## **CLOSING PUBLIC HEARING, DISCUSSION AND VOTE BY THE BOARD**

- Now that the case has concluded and all parties to the case have been heard, the Chairperson will close the hearing and the CDB will discuss the proposal.
- After discussion, the Chairperson will call for a motion and vote. At least four members must vote the same on any item before the board (i.e., four or more votes to approve, or four or more to deny). If a decision results in a vote of three to two, the matter shall automatically be continued to the next regularly scheduled meeting of the board for a decision.
- A written development order will be issued later which confirms the board's decision and is effective upon the date of the board meeting.

## LEGISLATIVE HEARINGS – LEVEL THREE CASES

- As stated earlier, the CDB’s role in Level Three applications, such as Comprehensive Plan amendments (including Future Land Use Map changes) and development agreements, is legislative, so the hearing follows a slightly different format.
- Like quasi-judicial hearings, the city presents first and has 10 minutes to present how the application or proposed amendment complies with the criteria established in the Code, which includes consistency with the city’s Comprehensive Plan.
- Some cases may be city initiated, but if the case is applicant-driven, the applicant then has 10 minutes to present an application and reasons why the Board should recommend approval of the application.
- Next, the general public has the opportunity to speak regarding the item and is given three minutes per person.
- Once public comment is taken, city staff has three minutes for closing remarks, followed by the applicant who also has three minutes to close.
- This concludes the public hearing phase of the legislative hearing. The CDB then discusses the proposal before voting to either recommend approval or denial of the application to the City Council.
- All Level Three applications are later considered by the City Council at up to two public hearings. Those meeting dates are also provided on all public notices.



In addition to Level Two and Level Three applications, the CDB also hears and decides on the following appeals.

- 1 Administrative interpretations of the Code.**
- 2 Orders, requirements, decisions or determinations made by an administrative official in the administration of the Code, except for enforcement actions.**
- 3 Level one approval decisions.**
- 4 Denials of any permit or license issued under the provisions of the Code.**
- 5 Any denials deemed to have occurred as a result of the failure of the Community Development Coordinator to act within the time limits provided in the Code.**





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## APPEALING THE BOARD'S QUASI-JUDICIAL DECISION

- If a person granted party status is not satisfied with the board's decision in a quasi-judicial case, he or she can file an appeal. To do this, an appeal form must be submitted along with a filing fee to the Clearwater City Clerk within 14 days of the board's decision pursuant to Section 4-502.B of the Code.
- The City Clerk coordinates with the Division of Administrative Hearings (DOAH), an agency of the State of Florida, to set an oral argument date, hour, and location. An appeal is heard by a hearing officer who is an administrative law judge with the DOAH.
- Because appeal hearings are not "de novo" the hearing officer will not consider new evidence or testimony. Instead, the hearing officer will only consider oral arguments based upon what is in the record, which is composed of:

**1 The Planning and Development Department file concerning the application.**

**2 The agenda of the initial review.**

**3 Any evidence submitted by any parties during the CDB hearing.**

**4 The video of the CDB hearing which is posted on the city's website.**

- At the appeal hearing, oral argument may be presented by the appellant (or the individual who files the appeal); the applicant, the city, the CDB, and any person granted party status.
- Unlike the initial hearing before the CDB, the burden of persuasion is on the appellant during an appeal. So, in order to gain a reversal of the Board's decision, you must prove that either:

**1 The decision of the CDB cannot be sustained by substantial competent evidence, or**

**2 The decision of the Board departs from the essential requirements of law.**

- The hearing officer cannot reweigh conflicting evidence or substitute his or her judgment for that of the board. This means that if there is evidence which would both support the board's decision and support a contrary view, the hearing officer cannot reverse the decision of the board.

## FIRST- AND SECOND-TIER CERTIORARI REVIEW

- If an appellant wishes to appeal the hearing officer's decision, he or she has two final appellate paths available after an initial appeal:
- The first is called "first-tier certiorari review" and requires you to file a petition for certiorari review with the Circuit Court of Pinellas County's Appellate Division. But be advised: while this review is done in court, it is not a "de novo" review either.
- Instead, the circuit court will take the same record the hearing officer reviewed to determine, based on the arguments you make in your petition, whether:

**1 The City afforded due process.**

**2 The decision departs from the essential requirements of law.**

**3 The decision is supported by competent, substantial evidence.**

- A petition for review must be filed with the circuit court within 30 days after rendition of the hearing officer's decision – which is the date that a signed, written copy of the hearing officer's order is given to the hearing officer's clerk for filing.
- The second and last appeal is a petition for "second-tier certiorari review" and requires a petition for certiorari relief in the Second District Court of Appeal.
- Like the appeal to the hearing officer or a first-tier certiorari petition, second-tier review is not a "de novo" review and the scope is even more limited than the circuit court's review.
- During second-tier review, the Second District simply looks to see whether the circuit court afforded due process and whether the circuit court applied the correct law.
- A petition for second-tier certiorari review must be filed with the Second District Court of Appeal within 30 days after rendition of the circuit court's decision on your first-tier certiorari petition.



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## **DISCLAIMER**

**This guide is not intended to be legal advice and is intended only to assist individuals with navigating the quasi-judicial and legislative hearing processes conducted by the Community Development Board. To determine your legal rights and to understand more fully how to participate in a quasi-judicial or legislative proceeding, you should contact legal counsel. The Clearwater Community Development Code is the official source of all process, development requirements, and time restraints for development approval in the city.**

Planning & Development  
Municipal Services Building  
100 S. Myrtle Ave., Second Floor  
Clearwater, FL 33756

