LEVELING THE PLAYING FIELD

Recommendations to Reduce Land Use Conflicts in Clearwater

Clearwater Neighborhoods Coalition, Inc.

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Committee Chair Contact:
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The CNC's Ombudsman Committee, now Land Use Conflict Resolution Committee

In 2021

JoAnna Siskin, CNC President

Christine Michalek, CNC Vice President

Shelly Kuroghlian, CNC Treasurer

Annette Pardue, CNC Secretary

Liz Drayer

Bill Jonson

Kelly Kelly

David Lillesand (Chair)

In 2022

Carl D. Schrader, Jr., CNC President

Bill Jonson, CNC Vice President

Rudy Michalek, CNC Treasurer

Kelly Kelly, CNC Secretary

Liz Drayer

Marita Lynch

David Lillesand (Chair)

Mission of the CNC Committee

- **To follow up on the Clearwater Charter Review Committee suggestion of an independent "ombudsman" for neighborhoods to resolve disputes between developers and residents**
- **Quickly developed that the ombudsman concept is inappropriate for this purpose**
- **Changed name of committee to "Land Use Conflict Resolution"**
- **Over 13 monthly meetings, reviewed 4,799 pages of materials relating to land use statutes and rules, conflict resolution alternatives, and quasi-judicial proceedings in the context of the city's Community Development Code and state statutes and caselaw**
- **Exchanged over 400 emails; and issued an 83-page Final Report**

What is the Community Development Code

- **Based on the Florida "Community Planning Act, F.S. 163.3161**
- **Powers and responsibilities of every municipality laid out in Florida Statutes, Section 163.3167:**
  - **Deal with all land use within the city**
  - **Develop a Community Comprehensive Plan and Development Code (ours is 660 pages!)**
  - **Sets up administrative procedures to administer the Code**
  - **Establishes a "local planning agency" (the CDB) with legislative duties and quasi-judicial duties**

What is the Community Development Board (CDB)

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

- **Conducts quasi-judicial legal hearings applying the code to particular facts to approve or deny an application.**

- **The applicant presents his case via lawyers and "experts" who can give "competent and substantial evidence" upon which the CDB can rule.**

- **Planning Department: "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." [Citizens Guide to CDB Hearings]**

What is

“Competent Substantial Evidence”

That is, what is

Expert vs. Lay Testimony

It is a legal term defined by various Court of Appeals’ decisions. Without it, the CDB cannot legally deny an application by a developer no matter how much they may hate the proposed development.

Only **expert witnesses** with competency in a particular specialty, can provide “**competent substantial evidence**.”

Katherine’s Bay v. Fagan and other cases hold, as a matter of law, that **lay witnesses’ “speculations”** no matter how great, about…

- potential traffic problems
- light pollution
- noise pollution
- general unfavorable impacts on the neighborhood
- resulting in reduction in home values
- incompatibility with surrounding land uses, and
- even though opposed by all the neighbors in the area

are **NOT “expert testimony”** yielding “competent substantial evidence” upon which a CDB decision can rest to deny a developer’s application. If denied, developer appeals.

The result

“The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges and to beg in the streets.”

– Anatole France, 1911, winner of Nobel Prize for Literature

The Clearwater Development Code, in its majestic equality, allows residents as well as developers to hire expensive attorneys and unlimited expensive expert witnesses of their choosing to represent their interests in quasi-judicial proceedings before the Clearwater Community Development Board.

– David Lillesand, 2021, Clearwater attorney and resident

The Reality – The Playing field is Not Level

"We live in a system that espouses merit, equality, and a level playing field, but exalts those with wealth and power, however gained."

– Derrick Bell, 1971, Harvard Professor of Law

New Statute Upending all the Katherine's Bay cases?

286.0115 Quasi-judicial proceedings on local government land use matters.

Section 286.0115(2)(b) states the municipality may adopt a new ordinance…

(b) In a quasi-judicial proceeding on local government land use matters, a person who appears before the decisionmaking body who is not a party or party-intervenor shall be allowed to testify before the decision-making body, subject to control by the decisionmaking body, and may be requested to respond to questions from the decisionmaking 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. *[emphasis added]*

Steps taken since issuing the report

- One-on-one meetings with every member of the past three City Councils; all former and successor department heads; the attorney for the CDB
- Ask for City Attorney's opinion/instruction to CDB on new statute
- Amend the City's Code to include the new statutory reference
- Train city staff and the CDB members on the new statute
- Keep CDB membership at 8 individuals, four experts and four non-experts, appointed by the City Council
- Adopt a Neighborhood Bill of Rights
- Change some of the time deadlines in the process
- When opposition to a project arises, (in 1 of 40 applications), set the CDB quasi-judicial Hearing in the evening, like city council meetings