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MEMORANDUM

TO: City Council Members
FROM: Tracey I. Arpen, Jr., Deputy General Counsel
RE: Quasi-judicial Proceedings - Reminder
DATE: July 8, 2003

We are occasionally asked to provide advice to City Council members regarding the taking of a public position on a land use matter prior to Council deliberation and vote. If the action is legislative in nature, such as Comprehensive Plan amendments, there is no problem with taking a position at any time.

A different rule applies when the action is quasi-judicial, such as rezonings and appeals concerning variances and exceptions. While the Florida Legislature and the City Council have enacted legislation to permit *ex parte* communications in such matters, considerations of due process and the right to a fair hearing still apply. Just as judges may not decide a case before hearing all the evidence, Council members may not take a position on a quasi-judicial matter before any public hearings are concluded.

Similarly, just as judges may be disqualified for prejudging a matter, a Council member may be disqualified from voting by publicly taking a position either for or against a quasi-judicial matter prior to the actual hearing. The reasons for this rule are more fully explained in the attached excerpt from City Council orientation materials.

In short, as a quasi-judicial officer, you are expected to resist any pressure or temptation to form or announce a position on any quasi-judicial matter in advance of the public hearing on that matter. Failure to do so may disqualify you from voting in the matter.

If you have any questions or need any additional information, please feel free to contact me or Theresa Rooney.

c: Jeannie Fewell, Director, Planning and Development Department
Lorrie DeFrank, Chief, Neighborhood Services

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DISQUALIFICATION IN QUASI-JUDICIAL MATTERS

One of the problems that has developed since the Legislature authorized *ex parte* communications is that local government officials are meeting with constituents, taking a position on the quasi-judicial issues, and then disclosing the constituent meeting at a public hearing, as required by Section 286.0115, Florida Statutes. If the issue was functionally legislative, there would be no problem with the official taking a position prior to the public hearing. *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3d DCA 1984). However, due process and the right to a fair hearing still apply in quasi-judicial matters. ***Thus, by publicly taking a position either for or against a quasi-judicial matter prior to the actual hearing date, a quasi-judicial officer subjects himself to being disqualified from taking any official action on the matter.*** See *State Board of Funeral Directors and Embalmers v. Cooksey*, 4 So.2d 253 (Fla. 1941); *Board of Public Instruction of Broward County v. State ex rel. Allen*, 219 So.2d 430 (Fla. 1969). Moreover, if the board member refuses to recuse himself, the entire decision is subject to reversal on appeal.

In *Huntley's Jiffy Stores, Inc. v. Brevard County*, Case No. 90-12261-AP (Fla. 18th Cir. 1991), Huntley's Jiffy Stores sought a rezoning of property for a retail, commercial use. Residents in the area opposed the rezoning, and the County denied the application. On appeal, the circuit court overturned the County's denial of the rezoning. In doing so, the court was highly critical of one County Commissioner who had apparently advised residents that he would oppose the rezoning. The Court stated:

Disquieting in our search was the revelation that a Commissioner telegraphed his decision before considering the information upon which the decision was to be made. We think that was a questionable departure from the fundamental fairness which should prevail when any governing body considers a citizen's request.

In *ABC Ventures, Inc. v. Board of County Commissioners of Brevard County*, Case No. 95-8041-AP (Fla. 18th Cir., January, 1996), ABC Ventures sought a rezoning. Residents from the area had made their position in opposition known prior to the Commission's public hearing. At the hearing, prior to listening to any comment from the applicant or the public on the application, the district County Commissioner moved to deny the rezoning. In overturning the County's decision, the Court noted that the proceedings were quasi-judicial, requiring impartial proceedings, and stated:

[a]t the Board hearing before any evidence was received, [the district] County Commissioner . . . moved for denial of the Petitioner's rezoning request which would give some cause to question the Commissioner's impartiality on the issue before the Board.

The message in the *ABC Ventures* and *Huntley's Jiffy Stores* cases is that individuals participating in quasi-judicial proceedings have a right to expect impartial decisions to be made on the basis of the evidence presented. Decision makers are well advised not to take a position on a quasi-judicial land development application until each side has made its presentation at the public hearing. Taking a position on a land development issue prior to hearing both sides of the issue at the public hearing deprives one side or the other of its constitutionally protected right to a fair hearing.