

*Submitted into the Record by James Stokes  
AT THE 3-8-2021 SPECIAL MEETING*

**From:** Gary Hunter <[GaryH@hgslaw.com](mailto:GaryH@hgslaw.com)>  
**Sent:** Thursday, February 25, 2021 5:32 PM  
**To:** Alfred Malefatto <[amalefatto@llw-law.com](mailto:amalefatto@llw-law.com)>  
**Cc:** Elizabeth Hertz ([ehertz@cityofpsl.com](mailto:ehertz@cityofpsl.com)) <[ehertz@cityofpsl.com](mailto:ehertz@cityofpsl.com)>  
**Subject:** RE: GL Homes Riverland/Akel Wilson Grove/Port St. Lucie

---

Thank you Al. I'm not sure what the City's attorney (Matt) agreed to at mediation or not. That is presently being worked out. And I understand your client's position on desiring a further continuance. My client is opposed to that.

Assuming a continuance is not granted (or if it is and this is special set for another date), the important aspect of this is our concurrence on the procedure to govern the hearing. Whenever that hearing happens. My understanding is that we agreed to the following this morning, subject to Ms. Hertz agreeing to recommend the same to her Council. Since we have 3 pending applications and based on the time allocations of Section 32.80(d) & (e) of the PSL land development code, the following would actually produce a streamlined format. The idea is to present all three applications at once. But the Council consider and vote on them separately after the presentation of information. That presentation would go as follows:

- Staff presentation of all 3 applications in whatever time required by staff
- Applicant presentation not to exceed 45 minutes and addressing all 3 applications
- Intervenor/ACR to have 15 minutes to cross-examine any applicant witnesses (not to be subtracted from applicant 45 minutes)
- Intervenor presentation not to exceed 45 minutes and addressing all 3 applications
- Applicant to have 15 minutes to cross-examine any intervenor witnesses (not to be subtracted from applicant 45 minutes)
- Applicant to have 10 minutes to rebut/close.

Without committing to the date of the hearing, will you please confirm that this protocol is acceptable. If so, Ms. Hertz we would ask that you offer this format to the Mayor/Council as that which makes sense for the hearing. Obviously I'm happy to discuss this with each of you as needed. Thanks to you both,

Gary K. Hunter, Jr.  
HOPPING GREEN & SAMS, P.A.  
119 S. Monroe Street, Suite 300  
Tallahassee, Florida 32301  
<https://link.edgepilot.com/s/16f7a383/x5XevR7IJEe1oE9ieBmwUw?u=http://www.hgslaw.com/>  
850-222-7500  
850-567-5763 mobile

**From:** Alfred Malefatto  
**Sent:** Friday, February 26, 2021 1:46 PM  
**To:** 'Gary Hunter' <[GaryH@hgslaw.com](mailto:GaryH@hgslaw.com)>  
**Cc:** Elizabeth Hertz ([ehertz@cityofpsl.com](mailto:ehertz@cityofpsl.com)) <[ehertz@cityofpsl.com](mailto:ehertz@cityofpsl.com)>  
**Subject:** RE: GL Homes Riverland/Akel Wilson Grove/Port St. Lucie

With the caveat that ACR/Wilson Grove's position is that the Riverland applications should not be heard, and that the special meeting currently scheduled for Monday March 8 should be postponed until the mediation between the parties is concluded, we agree with the procedure for presentation set forth in Gary Hunter's email below.

Please advise if there are any questions.

**Alfred J. Malefatto** | Shareholder  
515 North Flagler Drive, Suite 1500 | West Palm Beach, Florida 33401  
*Working remotely to adhere to LLW's COVID-19 Policy*  
[amalefatto@llw-law.com](mailto:amalefatto@llw-law.com) | (o) 561.640.0820 | (m) 561.346.6779  
[vCard](#) | [Website](#) | [Bio](#) | [join us online](#)



The information contained in this transmission may be legally privileged and confidential. It is intended only for the use of the recipient(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that you received this communication in error, and that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by reply email and delete the message and all copies of it.

## ARTICLE IX. -

### **POLICIES AND PROCEDURES FOR QUASI-JUDICIAL PROCEEDINGS**

Sec. 32.80(a). - Purpose, Scope, and Applicability.

- (1) Purpose: It is the policy of the City of Port St. Lucie ("City") to provide notice and guidance to all individuals and entities who appear before the City Council or by any City Board or Committee, as such board or committee as may be established by the City Charter and/or the Port St. Lucie City Code of Ordinances, acting in a quasi-judicial capacity, that said proceedings shall be subject to a public hearing and will be governed by the quasi-judicial proceedings set forth herein below shall govern said quasi-judicial public hearings.
- (2) Scope and Applicability: These procedures shall apply to all quasi-judicial hearings held by the City Council or by any City Board or Committee which holds quasi-judicial hearings. The City Attorney shall determine which matters are quasi-judicial in nature and shall direct the City Clerk or Board liaison to specifically designate such matters on the agenda.

(Ord. No. 17-65, § 3, 9-25-17)

Sec. 32.80(b). - Definitions.

1. *Applicant*: The owner of record or his or her authorized agent.
2. *Application*: The original document filed by the Applicant which has given rise to the quasi-judicial proceeding. This includes, but is not limited to, requests for variances, special exception uses, and rezonings.
3. *Citizen Participants*: Those members of the general public, other than the City's representatives or Staff or the Applicant, who attend a quasi-judicial public hearing for the purpose of being heard on a particular Application.

4. *Ex Parte*: Any communication, oral or written, between members serving on the applicable City Council, board or committee and the public, other than those made on the record at the public hearing.
5. *Official City File*: The City's project file that is established and created for a particular application, which shall include, but not be limited to, the Application at issue, all written communications exchanged between the City and the Applicant prior to the public hearing, all Staff Reports (including any recommendation, if applicable), if any, and pertinent sections of the City Code and Florida Statutes, and all other pertinent documents and materials on the matter.
6. *Party Intervenors*: A person, entity, or designated representative or spokesperson of a recognized group who is authorized by the City Attorney to intervene as a party in a quasi-judicial proceeding.
7. *Quasi-Judicial Proceedings*: Proceedings where existing policies and regulations are applied to a specific property.
8. *Record*: Refers to the testimony at the public hearing and the materials which are contained in the Official City File on the Application by the conclusion of the hearing.

(Ord. No. 17-65, § 3, 9-25-17)

#### Sec. 32.80(c). - Unauthorized Ex Parte Communications.

In all quasi-judicial hearings, all rulings must be based only upon the evidence presented at the hearing. In accordance with Florida Statute Section 286.0115(1), ex-parte communications with City Council, Board or Committee members in quasi-judicial matters is permissible and the adherence to the following procedures shall remove the presumption of prejudice arising from ex parte communications with City Council, Board or Committee members:

1. The substance of any ex parte communication with a City Council, Board or Committee member which relates to the quasi-judicial action pending before the said City Council, Board or Committee 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 a part of the Record before the final action on the matter.

2. A City Council, Board or Committee member may read a written communication from any person. However, a written communication that relates to a quasi-judicial action pending before the City Council, Board or Committee 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.
3. A City Council, Board or Committee member 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.
4. Disclosure made pursuant to subparagraphs 1, 2, and 3 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.

(Ord. No. 17-65, § 3, 9-25-17)

Sec. 32.80(d). - General Procedures for Quasi-Judicial Proceedings.

1. Any hearing listed on a City Council, Board or Committee agenda as a quasi-judicial public hearing will be conducted pursuant to these rules. This means that the applicable Council, Board or Committee is required by law to base its decision on the evidence contained in the Record of this proceeding, which consists of the testimony at the hearing and on the materials which are in the Official City File on this Application.
2. A complete copy of the Official City File shall be submitted by the applicable City department to the City Council, Board or Committee clerk no later than five (5) calendar days prior to the public hearing. All documents submitted at the public hearing shall be

supplemented by the City and/or City Council, Board or Committee clerk at the hearing. The Official City File shall be made available upon request for public inspection at the City Clerk's Office upon reasonable request.

3. Party Intervenors: The City Attorney, at his or her sole discretion, may allow a person to intervene as a Party Intervenor if they have an interest in the Application which is different than the public at large. Persons wishing to be designated as Party Intervenors shall submit a written request to intervene no later than 5 days prior to the hearing. The written request must include a detailed outline of their interest in the Application, a synopsis of their argument, copies of all documents which they intend to present at the hearing and a list of all witnesses they intend to call to testify on their behalf.
4. Time Limits:
  - A. City Staff Time Limits: The City staff shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the City's argument.
  - B. Applicant's Time Limits: The Applicant shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the Applicant's argument.
  - C. Party Intervenor's Time Limits: The Party Intervenor shall have up to twenty (20) minutes (including the presentation of witnesses and expert witnesses) to present the Party Intervenor's argument.
  - D. Citizen Participants: Citizen Participants, if applicable, shall each have three (3) minutes to speak.
  - E. The time limits listed hereinabove exclude any applicable time expended for cross-examination or questions from the City Council, Board or Committee members.

F. Extension of Time: The City Council, Board or Committee, at its sole discretion, may extend the time for presentations upon reasonable request.

(Ord. No. 17-65, § 3, 9-25-17)

Sec. 32.80(e). - Conduct of the public hearing.

1. The chairperson of the City Council, Board or Committee shall call the proceeding to order and announce that the hearing has begun and shall explain the rules concerning the quasi-judicial procedures, testimony and admission of evidence. The Applicant, City staff and/or the City Council, Board or Committee may request a waiver of certain rules contained herein to ensure efficiency and fundamental fairness to all parties. Such waiver must be mutually agreed to.
2. At the beginning of the hearing, the City Council, Board or Committee members will announce for the record any "ex parte" communications not previously disclosed in writing and included in the Official City File. The name of the person with whom the contact occurred and the subject matter of the discussion will be disclosed.
3. The City Council, or Board or Committee clerk, or similar individual, will administer an oath to all persons who intend to testify at this public hearing. Each Applicant shall disclose any consideration provided or committed directly, or on its behalf, for an agreement to support, or withhold objection to, the requested relief or action.
4. The presentation of the matter shall be in the following order:
  - (i) The City staff shall first place the Official City File into the Record and thereafter make its initial presentation;
  - (ii) The Applicant will then make a rebuttal presentation;
  - (iii) A Party Intervenor, if applicable, shall make a presentation;
  - (iv) Citizen Participants may speak for or against the Application;
  - (v) The City Staff, the Applicant and any applicable Party Intervenor shall have two (2) minutes each for rebuttal and/or closing statements; and

(vi) The City board shall commence deliberations and render a decision based on the Record.

5. All witnesses are subject to cross-examination during the hearing. After presentations have been made by the City staff, the Applicant and any Party Intervenor, if applicable, cross-examination will be permitted on the witnesses in the public hearing, including the City staff, the Applicant and any party Intervenor, in order of their appearance at the hearing. Cross examination shall be limited to two (2) minutes per witness. However, the Mayor or person presiding as the Chairperson over the meeting may enlarge the time period allowed for cross-examination when necessary to ensure due process is provided. Anyone who testifies at the hearing should remain until the conclusion of the hearing in order to be able to respond to any questions.
6. During the presentation of the case and testimony by City staff, the Applicant, and the Party Intervenor, if applicable, only the City Council, or Board or Committee members are permitted to ask questions and may ask questions at any time during the proceeding.
7. The Mayor or chairperson of the City Council Board or Committee or the legal advisor to the City Council, Board or Committee shall have the authority to determine if the questions and evidence is relevant. If the questioning is deemed to be improper or irrelevant, the chairperson or the legal advisor to the City Council, Board or Committee shall have the authority to halt the line of questioning.
8. At the conclusion of the hearing, the City Attorney or legal advisor shall advise the City Council, Board or Committee as to the applicable law and the factual findings that must be made to approve or deny the Application.

(Ord. No. 17-65, § 3, 9-25-17)

Secs. 32.81 – 32.84. - Reserved.