

RESOLUTION

NUMBER 95-172

A RESOLUTION ESTABLISHING A PROCESS TO
DISCLOSE EX-PARTE COMMUNICATIONS.

RECITALS

WHEREAS, government in Florida is conducted in the sunshine pursuant to Chapter 286, Florida Statutes, thereby enabling the public to voice its opinions to local elected public officials; and

WHEREAS, the Third District Court of Appeal in Jennings v. Dade County has ruled that ex parte communications directed to and from any elected local official concerning a quasi-judicial matter to be decided by them established a presumption of prejudice against decisions rendered; and

WHEREAS, local public officials have been obstructed or impeded from the fair and effective discharge of their sworn duties and responsibilities due to expansive interpretations of Jennings v. Dade County, a decision rendered by the Third District Court of Appeal; and

WHEREAS, removing the presumption of prejudice from ex-parte communications with local elected public officials is in the best interest of the citizens of Charlotte County.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Charlotte County, Florida:

1. That a process to disclose ex-parte communications with local public officials is hereby adopted to read as follows:

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

b. The substance of any ex-parte communication with a local 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 a part of the record before final action on the matter.

c. A local public official may read a written communication from any person. However, a written communication that 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 the final action on the matter.

d. 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.

e. Disclosure made pursuant to the above 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.

f. This resolution does not restrict the authority of the Board of County Commissioners to establish rules or procedures governing public hearings or contacts with local public officials.

PASSED AND DULY ADOPTED this 22nd day of August, 1995.

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY, FLORIDA

By Matthew D. DeBoer
Matthew D. DeBoer, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By Barbara T. Scott
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

Renee Francis Lee
Renee Francis Lee
County Attorney

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July 27, 1995

QUASI-JUDICIAL HEARING PROCEDURE
(EX PARTE COMMUNICATIONS)

- (1) The Chair announces the public hearing and requests that the representatives of the parties enter their appearances for the record.
- (2) All witnesses are sworn.
- (3) The Chair requests of all commissioners disclosure of any communications, investigations and site visits related to the subject matter of the hearing.
- (4) Each commissioner in turn shall thereupon:
 - (a) identify for the record the person or persons involved in any such ex parte communication;
 - (b) state the substance of the communication;
 - (c) inform as to any investigations or site visits made by the individual commissioner, including the date, time and the substance of any findings arising therefrom. It is advised that the commissioners make and keep memoranda reflecting the date, time and substance of such communications;
 - (d) cause such memorandum or notes made by the commissioner pursuant to (a) through (c) above, to be presented to the Clerk to the Board for inclusion in the public records of the proceeding;
 - (e) cause any written communication directed to the commissioner by any person regarding the subject matter of the hearing to be read into the record and presented to the Clerk to the Board for inclusion in the public records of the proceeding.
- (5) Upon completion of the steps outlined in (4) above, the Chair shall call upon the parties and the general public for any comments or opinions as to the matters disclosed. Thereafter, the applicant shall commence its case.