

Quasi-judicial hearings in a virtual world – lessons from a global pandemic

By Miriam Soler Ramos, B.C.S., City Attorney, City of Coral Gables

The COVID-19 pandemic was unexpected and had an immediate effect on government operations. With the most recent precedent for a pandemic being over 100 years ago, it left municipal attorneys to grapple with an ever-growing list of challenges and no guidance on how to solve them. The pandemic led, almost overnight, to municipalities sending employees home to work remotely and closing city buildings to the public, all while continuing to provide

the full services of local government. This required innovation, creativity, and careful planning.

An integral function of local government is the ability for elected and appointed bodies to meet, legislate, and otherwise govern. Consequently, many of the challenges faced by municipal lawyers in light of the pandemic, revolved around how to hold local government meetings while ensuring public participation, complying with the Florida

Sunshine Law, and protecting due process rights – particularly in the context of quasi-judicial hearings.

This article explores *Maria V. Cerda v. City of Coral Gables, et al.*, No. 2020-130-AP-01, 2021 WL 1511284 (Fla.Cir.Ct. Apr. 16, 2021), which serves as a valuable illustration of the challenges faced in this context and how the City of Coral Gables resolved them to the satisfaction of the Appellate Division of the Eleventh Judicial

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Chair’s Report

By Amanda Coffey



Friends, the 2021-2022 Section year has begun, and we have some exciting things to look forward to in the year ahead! Perhaps most importantly—*drumroll, please!*—

we can look forward to our first in-person annual seminar in over two years, in 2022. Your Chair-Elect (Janette Smith) is already plotting

various ways to make our return to a live event exciting and memorable, so keep an eye out for more announcements!

While the transition to a new Section year is a good time to look ahead, it also affords the opportunity to reflect back; and as I step into the role of Section Chair, I have to express my deep gratitude for the outstanding leadership of our immediate Past Chair, Don Crowell, and his predecessor, David Miller. Between them, and with the help and support of the Executive Council,

they helped the Section rack up some impressive achievements over the past two years: adopting revised and improved bylaws; updating the form, content, and functionality of our website; adapting to a virtual

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CHAIR'S REPORT

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world and discovering new ways to communicate and network; strengthening partnerships with other Bar Sections; and taking the first steps toward adoption of a strategic plan for the Section. I am committed to moving the strategic plan forward in a meaningful way over the next year. Part of that will include getting your input, so expect a member survey on this topic soon.

My goal as Chair is one of balance:

maintaining continuity in those areas where the Section already excels, and seeking out innovation in areas where the Section can grow. To that end, I will work closely with the Executive Council, Section Committee Chairs, and CLE Program Chairs (whose work and commitment are *essential* to all the Section does) to ensure that the Section continues to provide first-class CLEs, publications, and networking opportunities, while continuing to pursue the trend of improvements noted above.

In conclusion, I am deeply humbled to step into the role of Section

Chair, which has been held by so many strong leaders, many of whom I am happy to call mentors and friends. Over the years, I have been continually impressed by the supportive, cooperative, and welcoming nature of the Section's leaders and members, and I look forward to working with (and for) all of you as we move out of the shadow of COVID and into a brave new world, strengthened by the challenges of the past.

Together, let's make this a great year for the City, County and Local Government Law Section!

SPECIAL THANK YOU TO OUR SECTION COMMITTEE CHAIRS & CLE PROGRAM CHAIRS!

Your CCLGL Committee Chairs and CLE Program Chairs work incredibly hard every year to ensure the Section's programs continue to run smoothly. I want to take this opportunity to thank them for their hard work and commitment, which helps make this Section successful. If you appreciate the work done by a particular committee—for example, if you attend an excellent CLE, or find the Section's social media postings to be helpful—consider taking a moment to thank the committee or program chair(s) for their efforts. Additionally, I encourage you to check out the Section Committees page to see all the different Committees we have, and what they do. If any Committee's goals and mission appeal to you, please reach out directly to the Committee Chair to volunteer to assist.

Despite the challenges of 2020, the Section remains energized as a community, and our membership continues to demonstrate remarkable resilience, adaptability, cooperation, and strength in the face of adversity and uncertainty—and that is demonstrated in the tireless work of our Committee and Program chairs. I am proud to be part of this Section, and look forward to a bright and productive year ahead!

2021-2022 Chair's goals:

- **Strategic Plan:** Complete and implement a three-to-five-year strategic plan for the Section.
- **Continuity:** Maintain continuity in those areas where the Section excels (including timely, high-quality CLEs and resources), and seek out innovation in areas where the Section can grow.
- **Diversity & Inclusion:** Encourage diversity in Section leadership, and involvement of all interested members in the work of the Section.
- **Relationship Development:** Continue developing partnerships with other voluntary Bar sections to enhance the services provided by the Section and increase joint CLE offerings.
- **2022 Seminar:** Support the Chair-Elect in producing an exciting and informative 2022 annual seminar, as well as fun and beneficial networking events.



QUASI-JUDICIAL HEARINGS

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Circuit Court in and for Miami-Dade County, Florida.¹

In 2019, a property owner, intending to demolish a home, applied to the City of Coral Gables's (the "City") Historical Resources and Cultural Arts Department for a determination of historic significance. As required by the City's Zoning Code (the "Zoning Code"), a hearing was scheduled before the Historic Preservation Board (the "Board"). Prior to the inception of the pandemic, a traditional in-person quasi-judicial hearing was held before the Board to determine whether the property fit the criteria to be declared a local historic landmark. Following the in-person hearing, the Board declined to designate the home as historic. A neighbor, who had standing due to her proximity to the subject property, subsequently appealed the Board's decision not to designate the home to the City Commission, in accordance with the Zoning Code.

By the time the appeal was scheduled before the City Commission, the pandemic had resulted in an unprecedented inability for the City Commission to safely meet in person. It is well settled in Florida Attorney General opinions that in order for

a commissioner to attend a meeting virtually/telephonically, there must be a quorum physically present in the room. Accordingly, local elected officials were unable to perform their most basic function unless a physical quorum was present. Recognizing the importance of this issue, on March 17, 2020, Governor Ron DeSantis sent a letter to Attorney General Ashley Moody, seeking an advisory opinion regarding the permissibility of holding local government meetings through teleconferencing in order to protect the public, follow CDC guidelines, and comply with local emergency orders. On March 19, 2020, Attorney General Moody indicated that Florida law requires a physical quorum to be present in the room, and that local government bodies may only hold meetings virtually if either a statute permits a quorum to be present by a means other than in person, or the in-person quorum requirement is lawfully suspended during a state of emergency. Consequently, on March 20, 2020, Governor DeSantis issued Executive Order 20-69² which suspended the in-the-room quorum requirement thereby allowing for fully-virtual City Commission meetings.

With a fully-virtual option available, the City Attorney's Office set out to draft rules of procedure to ensure that robust public participation was possible and that due process was

preserved for those parties participating in quasi-judicial meetings. Once drafted, the City Commission adopted Rules of Procedure for fully virtual City Commission meetings by resolution and subsequently adopted Rules of Procedure for fully virtual quasi-judicial hearings. The rules set forth that all notices would make clear that City Hall was closed to the public, addressed appeals specifically, and provided various options for public participation.

On May 12, 2020, in accordance with the rules, the City Commission heard the appeal of the Board's decision not to designate the home, in a fully-virtual format over Zoom. During the hearing, all parties participated without issue and the public participated at length. At the conclusion of the hearing, in part due to the Mayor's recusal, the City Commission vote was tied, resulting in the matter being placed on the following City Commission meeting agenda on May 26th, in accordance with the City's Zoning Code. The May 26th vote on the item also resulted in a tie vote. Following the two meetings which resulted in tie votes, the appeal was denied, as required by the City Charter and City Code. As a result, the neighbor filed a petition for writ of certiorari asking a Circuit Court Appellate panel to quash the City Commission's decision to reject the

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QUASI-JUDICIAL HEARINGS

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neighbor's appeal. One of the grounds asserted by the neighbor in support of her request was that her due process rights were violated because the appeal was heard virtually on a Zoom platform, rather than in person. Specifically, the petition argued that while the property owner executed an agreement to a virtual Zoom hearing on the appeal, the neighbor was not given such choice and was instructed that a Zoom hearing was necessary.³

Whether a virtual quasi-judicial meeting violates due process was a matter of first impression. After rejecting the neighbor's claim because it was not properly preserved, the Court acknowledged that the Zoning Code required that the appeal be heard at the next commission meeting. "The City (like the rest of the world) was subject to municipal and statewide lockdown, but could not by its own ordinance delay the appeal until the lockdown was lifted."⁴ The appellate division acknowledged that the City briefly delayed the hearing to promulgate rules of procedure for virtual hearings, but found that the Zoning Code did not allow for any further delay.

In concluding that the neighbor's due process rights were not violated, the panel wrote:

Moreover, there was no option available to conduct the appeal in a live forum. These proceedings took place during a worldwide

pandemic in which local government meetings could not take place live. How court handled judicial proceedings during the pandemic is a helpful corollary to interpret due process rights during quasi-judicial proceedings. From the onset of the pandemic and concomitant shutdown in March 2020, the Supreme Court of Florida issued multiple Administrative Orders allowing and encouraging the use of virtual technology in all court matters with some exceptions, including jury trials. Testing the due process boundaries in the use of virtual technology, the Third District Court of Appeal held that use of a virtual platform to conduct a violation of probation hearing did not violate a defendant's right to due process and confrontation of witnesses. *See Clarington v. State*, 3D20-1461, 2020 WL 7050095 (Fla. 3d Dist. App. Dec. 2, 2020), *cert denied*, 3D20-1461, 2021 WL 115633 (Fla. 3d DCA Jan. 13, 2021). *If conducting a virtual criminal hearing at which incarceration may be ordered does not violate due process, using Zoom to conduct a quasi-judicial municipal hearing does not violate the due process rights of an aggrieved neighbor. We find that Petitioner's due process rights were not violated.*⁵

In the fall of 2020, the Governor allowed the executive order to expire, eliminating the possibility for fully-virtual meetings of local government bodies. This will remain true until such time as the Florida legislature takes up a change or the Attorney General's Office issues a different opinion. However, as the pandemic

draws closer to an end and the world continues to re-open, it is abundantly clear that virtual meetings and hearings are here to stay in many scenarios. How often and for what types of matters, remains to be seen. In 2021, where it is possible to accomplish so much through the use of technology, I submit that allowing fully-virtual meetings of local government bodies should be seriously considered by the Florida legislature. This case has proven that virtual meetings can be just as effective and protective of the rights of participants as traditional in-person meetings. If and when this possibility becomes a reality, applying the principles and tools used by the City of Coral Gables during the pandemic will be helpful in assisting others to successfully implement virtual meetings and hearings of local government bodies.

Endnotes:

1 Appellant has appealed the Circuit Court Appellate panel's ruling on a different point to the Third District Court of Appeal. At the time of the writing of this article, the appeal is still before the Court.

2 Executive Order 20-69 was extended various times by the Governor.

3 It is important to clarify that the City and property owner did not enter into an agreement. Rather, the City required that if the property owner wished to move forward and not request a continuance of the matter, that the property owner execute a hold harmless agreement that would protect the City from claims relating to the virtual nature of the meeting. The option on whether to continue the hearing on the appeal lies with the property owner as the property owner's property rights are potentially at issue.

4 *Cerda*, 2021 WL 1511284. at *4.

5 *Id.* at *4 (emphasis added).



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833-FL1-WELL



2021-2022
City, County and Local Government Law Section
Events

October 14, 2021

City, County and Local Government Law Section – Executive Council Meeting
Rosen Plaza, Orlando, FL (In conjunction with the PELRF seminar)

October 14-15, 2021

Public Employment Labor Relations Forum Seminar
Rosen Plaza, Orlando, FL

January 26-28, 2022

City, County and Local Government Law Section – Executive Council Meeting
Rosen Shingle Creek Resort, Orlando, FL (In conjunction with The Florida Bar Winter Meeting, Date TBA)

Date TBA

Sunshine Law, Public Records and Ethics for the Public Officers and Public Employees

April 20-22, 2022

City, County and Local Government Certification Review Course 2022
Virtual Webinar

May 5, 2022

Land Use Seminar 2022
City, County and Local Government Law Section – Executive Council Meeting
The Ritz-Carlton Golf Resort, Naples, FL

May 6, 2022

45th Annual Local Government Law in Florida
Annual Meeting
Awards Presentation
Reception

May 7, 2022

45th Annual Local Government Law in Florida

June 22-25, 2022

City, County and Local Government Law Section – Executive Council Meeting
Hilton Bonnet Creek Hilton Orlando, FL (In conjunction with The Florida Bar Annual Convention, Date TBA)