

Municipalities, use of parliamentary procedures

Number: INFORMAL

Date: March 03, 1998

Mr. Robert Tischenkel
Key West City Attorney
Post Office Box 1409
Key West, Florida 33041-1409

Dear Mr. Tischenkel:

You ask whether due process is violated when a tie vote results in denial of a land use decision pursuant to parliamentary procedures adopted by the city commission.

You state that the City Commission for Key West, by resolution, has adopted Robert's Rules of Order to govern its public meetings. Robert's Rules of Order provide that a motion fails upon a tie vote. The city's form of government does not allow for a tie-breaking vote by the mayor, but rather is structured such that the mayor has a vote equal to that of the fellow commissioners. On several occasions, tie votes have resulted in the denial of applications regarding land use matters. In light of the quasi-judicial nature of land use decision-making, the question has arisen as to whether a denial based on a tie vote affords the applicant due process.

In *Jennings v. Dade County*,^[1] the court recognized that the quality of due process required for quasi-judicial proceedings is not the same as that afforded to a party in a judicial proceeding. The court stated:

"A quasi-judicial hearing generally meets basic due process requirements if the parties are provided notice of the hearing and opportunity to be heard. In quasi-judicial zoning proceedings, the parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the commission acts."^[2]

The due process guarantee in the Florida Constitution provides that "[n]o person shall be deprived of life, liberty or property without due process of law."^[3] Substantive due process protects an individual's rights from unwarranted encroachment by the government. Generally, in determining whether the government's encroachment is justified a court will consider

"the propriety of the state's purpose; the nature of the party being subjected to state action; the substance of that individual's right being infringed upon; the nexus between the means chosen by the state and the goal it intended to achieve; whether less restrictive alternatives were available; and whether individuals are ultimately being treated in a fundamentally unfair manner in derogation of their substantive rights."^[4]

Procedural due process ensures fair treatment through the proper administration of justice where substantive rights are at issue.^[5] Generally, therefore, due process requires that the procedure adopted for considering a matter be fair and afford reasonable notice so that interested parties

have a reasonable opportunity to be heard in an orderly proceeding before judgment is rendered.[6]

In *Battaglia Fruit Company v. City of Maitland*,[7] the court considered whether the county commission's failure to follow the generally accepted rule of parliamentary procedure that a tie vote results in a failure of the vote violated the procedural due process rights of any of the parties in a rezoning proceeding. In that case, after the tie vote, the meeting was continued and the commission reconsidered and voted to approve the rezoning application. The City of Maitland argued that the initial tie vote should have constituted a binding denial of the application, resulting in the applicant having to wait nine months before applying for another hearing regarding the same property.

The *Battaglia* court found that parliamentary rules not adopted as part of a governmental body's organic law may be waived or disregarded, and courts will not enforce their observance.[8] Citing to the absence of a county code provision that a tie vote constitutes a final decision in a zoning matter, the court concluded that the failure of the commission to observe a general rule of parliamentary procedure did not violate any party's procedural due process rights.[9]

In this instance, you state that the city by resolution has adopted Robert's Rules of Order. Thus, parties who come before the city on rezoning applications have notice that the parliamentary rules adopted by the city dictate that a tie vote on such a request results in denial of the application. Given that parties to the proceedings have been afforded reasonable notice and a full and fair opportunity to be heard, the city's adherence to the parliamentary rules it has adopted would more fully ensure that due process is provided.

I trust these informal comments provide guidance in the resolution of this matter.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tgk

[1] 589 So. 2d 1337 (Fla. 3d DCA 1991).

[2] *Id.* at 1340-41.

[3] Article I, s. 9, Fla. Const.

[4] *Department of Law Enforcement v. Real Property*, 588 So. 2d 957, 960 (Fla. 1991).

[5] *Id.*

[6] *See Scull v. State*, 569 So. 2d 1251 (Fla. 1990).

[7] 530 So. 2d 940 (Fla. 5th DCA 1988).

[8] 530 So. 2d *at* 942.

[9] *Id.*