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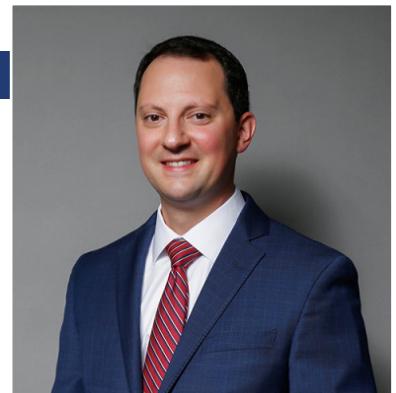
THE SPIRIT OF TRUTH

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From Quasi-Judicial to Judicial: Practical Considerations for Appealing Local Governments

By John J. Cavaliere, III



Your client asked you to appear at a quasi-judicial hearing before a local government. Your client thinks the cause is a slam dunk and cannot imagine the commission will disagree. Your presentation is exactly what the client wants, short and sweet, with only a few nuisance complaints from neighbors and staff in opposition. Shockingly, the local government sides with your client's opponents. Now the client wants to appeal.

If this is the first time anyone thought about an appeal, you may be too late to mount an effective challenge to the local government's decision. To avoid this fate in the future, here are some practical considerations to preserve your arguments, build your record, and increase your client's chances on appeal.

Consult experienced appellate counsel. Land use, code enforcement, or other quasi-judicial hearings are often handled by non-attorneys or attorneys with little appellate experience. Even an experienced trial attorney can be unfamiliar with the nuances of certiorari review—which is the most common appellate means to challenge quasi-judicial decisions. If you have doubts about the board members' leanings or if your client has a controversial issue, consider having experienced appellate counsel present or assisting in the presentation.

Know your appellate universe in advance. Is this a code enforcement proceeding with a statutory right to appeal?¹ Does the local government have an appellate process that must be exhausted before resort to judicial relief? Is this a proceeding without a statutory right to appeal, meaning you must file a petition for writ of certiorari to challenge the decision?² The answer has a massive affect on cost, deadlines and workflows.

If you have a statutory right to appeal, you can file your notice of appeal within 30 days of the written order, and then file your initial brief within 70 days after your notice of appeal.³ But if you need to file a petition for writ of certiorari, you have 30 days from the date of the written order to compile your record for the appendix and file your petition (re: full brief),⁴ otherwise, the court will lack jurisdiction and the case will end.⁵

Know the local rules before the hearing and plan accordingly. A court may quash a local government's decision based on a denial of procedural due process.⁶ You should know the local rules before the hearing and be ready to object if the board does not follow them. What are the time limits for presenters? Are you allotted time for cross-examination? If the board deviates from their written procedures, object. Otherwise, you could waive due process issues for the appeal.

Build the record before and during the hearing. Address counterarguments in writing before the hearing. Read the staff comments, if any, and submit a letter explaining why staff is wrong in their recommendation. Or explain why staff's recommendation is supported by a reason that staff left out of their report. Counter your opponents' written statements. You will likely have limited time to present oral argument to the local body, so written advocacy in the record will go a long way on appeal.

Make sure the board (or hearing officer) has all your documents before the hearing begins. Keep copies of everything submitted and refer to your submissions in your presentation.

Hire your own court reporter. Your tight turnaround time for appeal means you cannot rely upon the local government to publish a transcript in time for your brief. Your own court reporter, who can produce the transcript on an expedited basis will be critical.

After the hearing. Order the transcript. Keep checking for the written decision. Your clock starts as soon as the written order is rendered.⁷ Gather all documents in the record from the local body, preferably with timestamps indicating their inclusion in the record. You may need to submit a public records request immediately following the hearing.

You will need to compile your own record in an appendix.⁸ Finish the appendix early so you can cite to the record appropriately in the brief or petition.⁹ Finally, learn the court's file size limitations, which may require you to split the appendix into multiple volumes. If this occurs, you need to adjust your record citations throughout your brief to reflect

the appendix volume and page number¹⁰—something you don't want to do minutes before your deadline.

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1. See, e.g., § 161.11, Fla. Stat.
2. Fla. R. App. P. 9.030(c); 9.100(f); 9.190(b)(3); art. V, § 5, Fla. Const.; *Broward Cnty. v. G.B.V. Intern., Ltd.*, 787 So. 2d 838 (Fla. 2001).
3. Fla. R. App. P. 9.110(f).
4. Fla. R. App. P. 9.100.
5. Fla. R. App. P. 9.100(c)(1); see *Wibbens v. State, Dept. of Highway Safety & Motor Vehicles, Bureau of Driver Improvement*, 956 So. 2d 503, 504 (Fla. 1st DCA 2007) (This time limit is jurisdictional and failure to meet it will result in dismissal of the petition.).
6. *Haines City Cnty. Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995).
7. Fla. R. App. P. 9.020(h) (defining rendition of an order)
8. See Fla. R. App. P. 9.220; Fla. R. App. P. 9.100(g).
9. See Fla. R. App. P. 9.100(g) and Fla. R. App. P. 9.210(b)(3), both requiring citations to pages in the record.
10. *Id.*



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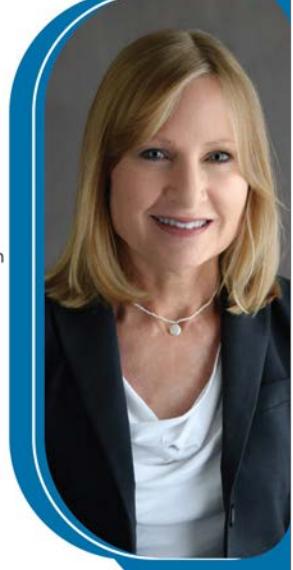
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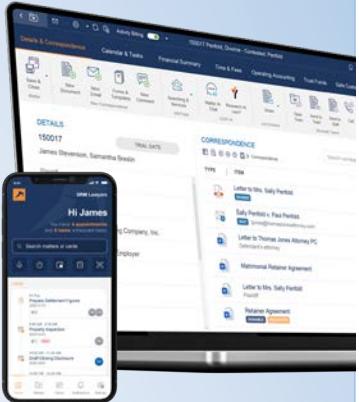
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