

INTENT STATEMENT

The purpose of this amendment is to allow public testimony by a Party of Record at the Board of County Commissioners (BOCC) Land Use Meeting for rezoning applications without requiring the Party of Record to file a Request for Oral Argument.

Land Development Code (LDC) Section 10.03.04.E. outlines the criteria and procedures under which the BOCC is permitted to allow public testimony by a Party of Record (as defined in LDC Section 10.03.06). Pursuant to 10.03.04.E. a Party of Record is required to meet filing criteria and to file a Request for Oral Argument with the Clerk of the Board. If a Party of Record does not file the Request for Oral Argument in accordance with these criteria and procedures they are not permitted to provide public testimony.

This amendment updates LDC Sections 10.03.02.G and 10.03.04.E by removing the Oral Argument references, filing criteria and procedures in the LDC. It will thereby be permissible for a Party of Record to provide public testimony without first having to file a Request for Oral Argument.

LDC 20-0721	Division Director Sign-off	
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PROPOSED REVISED LAND DEVELOPMENT CODE TEXT

20-0721

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Land Use Meeting for rezoning applications

Amended on: 03/03/2021 11:02 AM

Sec. 10.03.02.

PRE-HEARING PROCEDURES

G. Notice Content

1. Mailed and published notices shall contain the following information:
 - a. Application number and date of filing.
 - b. Present and proposed zoning classifications and/or proposed Special Use or proposed change if major modification.
 - c. Location of the property.
 - d. Date, time, and place of Land Use Hearing Officer public hearing.
 - e. A statement in substantial compliance with the following form:
 - (1) Copies of the application and department reports are kept by the Administrator and are open to public inspection in the offices of the Clerk of the Board and the Administrator.
 - (2) All interested persons wishing to submit testimony or other evidence in this matter must submit same to the Land Use Hearing Officer at the public hearing before him or to the Administrator two business days prior to the public hearing.
 - f. A statement in substantial compliance with the following form:

The review of the Land Use Hearing Officer's recommendation by the Board of County Commissioners of Hillsborough County shall be restricted to the record as defined in the Hillsborough County Land Development Code, as amended, unless additional evidence ~~and/or oral argument~~ and/or oral argument is presented pursuant to the terms of said Code.
 - g. Instructions for obtaining further information regarding the application.
 - h. Name, address and telephone number of applicant or applicant's agent.
2. In addition to the foregoing, mailed notices shall include the following:
 - a. Due date of the staff recommendation on the application.
 - b. A statement requesting that citizen input be submitted to the County prior to the formulation of the staff report and recommendation to allow for citizen involvement prior to staff's reaching its final recommendation to the Board of County Commissioners or Land Use Hearing Officer, as appropriate.

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REVIEW BY BOARD OF COUNTY COMMISSIONERS

C. Evidence Before the Board of County Commissioners

1. The record before the Board of Commissioners upon consideration of an application shall be the complete record of the hearing before the Land Use Hearing Officer, including his recommendation. Except in those instances where the application involves a proposed zoning classification change or Special Use request that is either initiated by the County or is part of the review and application for development approval pursuant to Chapter 380.06, Florida Statutes, the Board, after reviewing the record and recommendation, shall consider additional evidence, ~~and oral argument, and oral argument~~ only as provided in D below.
2. Applications initiated by the County or considered as part of the review of an application for Development of Regional Impact approval shall be considered by the Board within the context of a public hearing as below. All irrelevant, immaterial or unduly repetitious evidence shall be excluded. The record shall be transmitted to the Board at least five calendar days prior to the date set for final consideration by the Board.
3. In those instances where the application involves a proposed zoning classification change or Special Use Permit approval, initiated by either the Board of County Commissioners or the Administrator, the Board shall consider the record of the Land Use Hearing Officer hearing and the recommendation within the context of a public hearing at which all interested individuals and County staff will be given an opportunity to present testimony and other evidence. Said public hearing shall be advertised in accordance with the terms of B above and Section 125.66, Florida Statutes. Said public hearing shall be conducted in accordance with the terms of this Code relating to conduct of the public hearing by the Land Use Hearing Officer. Provisions of D below shall not be required in this context.
4. In those instances where the application involves a proposed zoning classification change or Special Use Permit approval which is being considered as a part of the review of an Application for Development of Regional Impact Approval pursuant to Chapter 380.06, Florida Statutes (1981), as amended, the Board shall consider the record of the Land Use Hearing Officer hearing and the recommendation within the context of a public hearing at which all interested individuals and County staff will be given the opportunity to present testimony and other evidence. Said public hearing shall be advertised in accordance with the terms of B above and Section 380.06, Florida Statutes (1981). Said public hearing shall be conducted in accordance with the terms of this Code relating to conduct of the public hearing by the Land Use Hearing Officer. Provisions of D below shall not be required in this context. The Application for the Development of Regional Impact Approval shall be reviewed in accordance with those procedures mandated by law.

D. Additional Evidence ~~and Oral Argument~~ and Oral Argument

1. The Board of County Commissioners shall consider only the record of the proceedings before the Land Use Hearing Officer, unless additional evidence, ~~and/or oral argument are, and/or oral argument is~~ accepted pursuant to the terms of this Section. The provisions contained herein relating to restricted presentations before the Board do not apply to public hearings convened by the Board to consider applications initiated by the County or that are part of the Development of Regional Impact review process. These public hearings are governed by the provisions of C above.

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2. Additional evidence may be allowed pursuant to the provisions of this Subsection, if:
 - a. Through the exercise of due diligence it could not have been discovered in time to present same to the Land Use Hearing Officer; and/or
 - b. The witness could not appear at the public hearing for good reason beyond his control.
3. Within ten calendar days after the date of filing of the Land Use Hearing Officer's recommendation, the individual seeking to introduce the additional evidence described in 2 above, shall file with the Clerk of the Board a written request including:
 - a. The additional evidence; and
 - b. The reasons why the evidence could not through the exercise of due diligence have been discovered in time to present same to the Land Use Hearing Officer; and/or
 - c. The reasons why the witness could not appear.
4. The request shall be filed on forms available from the Administrator. A copy of said request shall be maintained by the Administrator and maintained in a master file available to the public and the Board.
5. The additional evidence, if documentary, shall be attached to the request. If testimonial in nature, a summary of the testimony shall be provided.
6. The Board shall consider the request for presentation of additional evidence and responses thereto at the public meeting on the Land Use Hearing Officer's recommendation. Staff of the Office of County Attorney shall review the additional evidence request in regard to whether or not the request meets the criteria stated in 2 above and whether or not the additional evidence is duplicative of material already in the record before the Land Use Hearing Officer. Staff of the County Attorney's Office shall report its findings at the meeting before the Board. The Board shall remand the proceeding to the Land Use Hearing Officer for the purpose of consideration of the additional evidence if he finds all the following:
 - a. The additional evidence could not through the exercise of due diligence have been discovered in time to present same to the Land Use Hearing Officer, or the witness could not appear at the public hearing for good reason beyond his control.
 - b. That the additional evidence is not duplicative of material already in the record before the Land Use Hearing Officer.
 - c. The evidence is relevant to the issues raised by the petition at issue.
7. If the Board finds that the additional evidence is not admissible based upon the criteria contained herein, then the Board shall deny the request and proceed to consider the petition. The Board of County Commissioners shall specifically state on the record why a request has been denied. Once a request is denied, the material presented shall not be considered by the Board in its deliberations.
8. If the Board finds that the additional evidence is admissible and therefore elects to remand the proceedings to the Land Use Hearing Officer, then the Board shall establish a date for said hearing. The remanded proceedings shall be conducted in accordance with the terms of this Code applicable to proceedings before the Land Use Hearing Officer, except that said proceeding does not have to be renoticed. At the conclusion of the remanded proceedings, the Land Use Hearing Officer shall file an amended recommendation which has considered the introduction of the additional evidence. The Clerk of the Board shall

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renotify all parties of record of the new set time and date at which the Board will consider an application for a final decision.

9. If the applicant elects to waive any objection to the additional evidence, the Board of County Commissioners may proceed to consider the petition without remand.

E. ~~Oral Argument~~ Oral Argument ~~Public Testimony~~

1. The Board ~~may~~ shall allow public testimony by Parties of Record at its meeting to consider the Land Use Hearing Officer's recommendation for any item on the Regular Agenda. ~~In order to further define the parameters of the testimony, the Board establishes the following standards for consideration of oral argument, one of which must be met in order for the Board to open for oral argument: Any public testimony shall be limited to the record of the proceedings before the Land Use Hearing Officer, unless additional evidence has been found admissible in accordance with this Part.~~

a. ~~In those instances where the Board finds that oral argument is necessary to resolve ambiguities in the record of the Land Use Hearing Officer proceeding, the Board shall allow said oral argument for said limited purpose.~~

b. ~~In those instances where the Board finds that oral argument is necessary to fully understand the relevancy of additional evidence submitted pursuant to the terms contained herein, the Board shall allow said oral argument for said limited purpose.~~

c. ~~In those instances where the Board finds that there is a mistake in the Land Use Hearing Officer's recommendation, the Board shall allow oral argument for the limited purpose of addressing such an error.~~

d. ~~In those instances where the Board finds that the Land Use Hearing Officer did not address a matter introduced into the record, the Board shall allow oral argument for the limited purpose of addressing such matter.~~

~~The content of testimony shall be the same as the content of testimony submitted verbally or in writing to the Land Use Hearing Officer.~~

2. ~~Requests for oral argument shall be filed with the Clerk of the Board within ten calendar days after the date of filing of the Land Use Hearing Officer recommendation with the Administrator and shall be prepared on forms available from the administrator. The request shall be based upon the criteria described in 1 above and shall include a detailed statement setting out the reasons for approval of the request for oral argument. A copy of the request shall be maintained by the Administrator in a master file available to the public and the Board of County Commissioners.~~

3. ~~Staff of the Office of County Attorney shall review the request for oral argument in regard to whether or not the request meets the criteria stated in 1. above and whether or not the additional evidence is duplicative of material already in the record before the Land Use Hearing Officer. Staff of the County Attorney's Office shall report its findings at the meeting before the Board and make a recommendation as to whether the request for oral argument meets the criteria required therefor.~~

4. ~~In the event the Board approves the request, said approval shall extend only to those individuals named in the request. If the request has been filed in the name of a citizen's association, then the Board reserves the right to request said association to appoint a speaker to present oral argument. The Board shall consider said request at the public meeting on the Land Use Hearing Officer's recommendation. The Board reserves the right on its own motion to grant oral argument.~~

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52. ~~If the Board permits oral argument~~ For applications which are subject to oral argument ~~public testimony~~, the order of appearance and total time allotments shall be as follows:
- a. Applicant ~~oral argument~~ oral argument ~~testimony~~: Ten minutes.
 - b. Administrator; summary of the application, County staff and department findings: five minutes.
 - c. Planning Commission staff; statement of compliance or noncompliance: five minutes.
 - d. Party of record ~~(non-applicant) oral argument~~ oral argument ~~testimony by proponents~~: ten minutes.
 - e. Party of record oral argument ~~testimony by opponents~~: ten minutes.
 - ef. Staff; amended recommendations, if any: five minutes.
 - fg. Applicant; rebuttal: five minutes.
63. If the Board finds that ~~oral argument~~ oral argument ~~public testimony~~ has raised issues that require further Land Use Hearing Officer review, then the Board reserves the right to remand the proceedings to the Land Use Hearing Officer. If the Board decides to remand the proceedings, then the Board shall establish a date for said hearing. The remanded proceedings shall be conducted in accordance with the terms of this Code applicable to proceedings before the Land Use Hearing Officer, except that said proceedings do not have to be renoticed. At the conclusion of the remanded proceedings, the Land Use Hearing Officer shall file an amended recommendation which considers the issues addressed by the Board. The Clerk of the Board shall renote all parties of record of the new set time and date at which the Board will consider an application for a final decision.

F. Continuances Before the Board

1. The public meeting may be continued by the Administrator to a date certain if the continuance request is filed with the Administrator no less than 14 calendar days before the Board's meeting date. The Administrator shall determine whether the continuance shall be granted due to the petitioner or expert witness being unable to attend, or if it is known that the full Board will not be in attendance.
2. The applicant shall send notice of the continuance by proof of mailing to all parties of record no less than 11 calendar days before the Board's meeting. This notification shall include the new time, date, and location of the meeting.
3. If the criteria for granting a continuance as listed in 1 above are not satisfied, the continuance request shall be considered by the Board at its meeting when the petition was scheduled for consideration.
4. At the Board's discretion for unique circumstances, the Board may continue a petition at the Board meeting without notification.

G. Consideration and Final Decision of the Board

1. The Board shall consider the record of the hearing before the Land Use Hearing Officer, any additional evidence and oral argument ~~public testimony~~ introduced pursuant to the terms herein and shall approve or deny the application by resolution. The resolution shall include a statement of compliance or all points of noncompliance with the Comprehensive Plan, if different from the conclusions of the Land Use Hearing Officer, and shall give specific reasons for any decision contrary to his recommendation. A resolution approving an application shall specify any conditions which are required as part of the Board's approval.

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2. The Board reserves the right to continue the public meeting upon a finding that said continuance is necessary to a complete review of the Land Use Hearing Officer's recommendation. Said continuance shall be to a date and time certain.
3. The Board reserves the right to remand a petition to the Land Use Hearing Officer when sufficient additional evidence after the Land Use Hearing Officer hearing is provided or when the petition requires further Land Use Hearing Officer review.

(Ord. No. 99-25, § 2, 11-18-99; Ord. No. 99-26, § 2, 11-18-99; Ord. No. 00-38, § 2, 11-2-00; Ord. No. 01-30, § 2, 11-15-01; Ord. No. 03-9, § 2, 6-5-03; Ord. No. 06-18, § 2, 8-1-06)