



# Agenda Item Cover Sheet

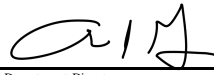
Agenda Item No. \_\_\_\_\_

Meeting Date June 7, 2022

Consent Section

Regular Section

Public Hearing

Subject: Proposed Land Use Meeting Process Land Development Code Amendments			
Department Name: Development Services			
Contact Person: Adam Gormly		Contact Phone: 276-8422	
Sign-Off Approvals:			
			5/31/2022
Assistant County Administrator _____		Department Director _____	
Date _____		Date _____	
Management and Budget – Approved as to Financial Impact Accuracy _____		County Attorney – Approved as to Legal Sufficiency _____	
Date _____		Date _____	

**Staff's Recommended Board Motion:**  
 Direct staff to initiate an amendment as part of the Round 2, 2022, Land Development Code Amendments to revise the role of the Board of County Commissioners and Land Use Hearing Officers in the rezoning process.

Approval of this agreement item would not increase or decrease any County Departmental budgets.

**Financial Impact Statement:**  
 Approval of this agreement item would not increase or decrease any County Departmental budgets.

**Background:**  
 On December 15, 2021, the Board of County Commissioners held a workshop on the Land Use Meeting process which focused on the current processes and rules governing rezoning applications. The workshop provided an overview of the types of rezoning applications considered by the Board and the review processes associated with each type.

At the April 12, 2022, Land Use Meeting the Board received a report that identified the considerations raised by the Board on several rezoning process items, identified options for process changes and provided information on the rezoning processes other jurisdictions have in place. Following Board discussion of the report, the Board directed that draft Land Development Code language be drafted that would address the following:

- Maintain the current option for certain rezoning applications to be considered as part of a Consent Agenda
- Board of County Commissioner review of rezoning applications not be limited to Zoning Hearing Master record
- Clarify role of Zoning Hearing Master as being advisory only and limited to basic compliance matters
- Change the title of the Zoning Hearing Master process

- Establish a process whereby Zoning Hearing Masters certify that they have no conflict of interest for any application they will consider
- Change qualifications to require that Zoning Hearing Masters be either an attorney or a planner

The attached draft Land Development Code changes have been in accordance with the Board's direction. Staff is seeking direction to initiate an amendment as part of the Round 2, 2022, Land Development Code Amendments which will include outreach and discussion with our stakeholders, Board review of stakeholder feedback, and public hearings to be held on September 29, 2022, and October 20, 2022, to consider adoption.

List Attachments: Draft Land Development Code changes

---

## Sec. 9.02.01. Land Use Hearing Officer

### A. Establishment

There is hereby created the position of Hillsborough County Land Use Hearing Officer.

### B. Appointment and Removal

1. The Board of County Commissioners shall appoint one or more Land Use Hearing Officer(s) from among three or more persons recommended for each position by the Administrator. Should the Board of County Commissioners appoint more than one Land Use Hearing Officer, the terms of office shall be appropriately staggered and applications shall be equally assigned to Land Use Hearing Officers by a confidential rotation system.
2. Each Land Use Hearing Officer shall be appointed for a definite term of office, not to exceed four years, and may be reappointed at the conclusion of any term.
3. A Land Use Hearing Officer ~~shall may~~ be removed ~~only for cause~~ by the Board of County Commissioners upon the provision of written notice and in accordance with any terms specified in their contract for services. Cause for removal of a Land Use Hearing Officer shall include, but not be limited to, violations of these standards set forth in the Code of Judicial Conduct, adopted by the Florida Supreme Court.

### C. Qualifications

1. A Land Use Hearing Officer shall be appointed solely with regard to the qualifications for the duties of the office which shall include but not be limited to relevant professional knowledge, experience and qualifications as well as any such other factors that may have a bearing on providing the services of a Land Use Hearing Officer.
2. A Land Use Hearing Officer ~~shall either be a planner certified by the American Institute of Certified Planners for at least three years or be licensed to practice law in Florida for at least three years. A Land Use Hearing Officer shall have~~ shall have a degree in planning or interrelated professional field, with at least three years of professional experience working as an AICP certified planner or attorney in the field of in planning, zoning or similar matters shall have a degree in architecture, engineering or law and shall have been licensed to practice in Florida for at least three years in his respective profession.
3. A Land Use Hearing Officer shall not hold other appointive or elective office or position in government during his term.
4. A Land Use Hearing Officer shall not be an employee of Hillsborough County.

### D. Compensation

The Land Use Hearing Officer shall be compensated for his services from the general revenue funds of the County. The Board of County Commissioners shall set the compensation.

### E. Custody of Books and Papers

The Clerk of the Board of County Commissioners shall maintain a file of all papers submitted to ~~him~~ them and shall have the official custody of the application, the Land Use Hearing Officer's ~~findings and recommendation~~ written advice, and the record of all proceedings regarding the application. All such files shall be open to inspection by any person at reasonable times, under reasonable conditions, and under supervision by the custodian of such files or his designee. Any costs of reproduction shall be paid by the persons requesting copies of said documents.

### F. Financial Disclosure

---

Each person appointed as Land Use Hearing Officer shall be subject to the provisions of Section 112.3145, Florida Statutes, insofar as they relate to local officers. Such disclosure shall be filed with the Supervisor of Elections. The failure to comply with the provisions of this subsection shall constitute just cause for removal from office.

#### G. Powers and Duties

1. The Land Use Hearing Officer shall have all powers necessary to conduct the hearings assigned to the Land Use Hearing Officer by this Code and to fulfil any direction provided by the Board of County Commissioners.
2. The Land Use Hearing Officer shall have the power to issue notices, conduct of hearings ~~and subpoenas requiring the attendance of witnesses and production of evidence,~~ and the power to administer oaths and take and consider testimony and evidence as provided in this Code.
3. It shall be the duty of the Land Use Hearing Officer to inquire fully into the facts of each case.  
However, a Land Use Hearing Officer shall not become an advocate for any participant in any zoning case, nor shall a Land Use Hearing Officer impose their theory of the case upon any participant during the hearing.

In addition to the powers described above, the Land Use Hearing Officer shall have the following powers and duties with respect to such cases:

- a. To receive stipulations of fact, agreed to in writing, by the participants. Such stipulations, if filed, shall may be regarded and used as evidence at such public hearing. ~~A Land Use Hearing Officer may, nevertheless, require subject to any confirmations or -such additional information or evidence as he may deem be necessary. However, a Land Use Hearing Officer shall not become an advocate for any participant in any zoning case, nor shall a Land Use Hearing Officer impose his theory of the case upon any participant during the hearing.~~
- b. To accept in lieu of originals, true copies of such documentary evidence as may be offered.
- ~~c. To request printed or written briefs to be filed on behalf of any of the participants in such hearings. Such briefs shall contain an abstract of the evidence and also the arguments relied on by the participant filing the same. Briefs, when requested, shall be prepared and filed with the Land Use Hearing Officer within such time or times, and under such regulations, as to service of copies thereof upon the other participants, as the Land Use Hearing Officer may prescribe. The above described request shall be filed on forms available from the Administrator.~~
- ~~d. To dispose of procedural requests or similar matters including motions to modify and motions to consolidate applications.~~
- ~~e. To call, examine and cross-examine witnesses and to introduce into the record all relevant evidence.~~
- ~~f. To keep a record of all persons requesting notice of the decision in each case.~~
- ~~g. To receive oral testimony presented by all interested individuals.~~
- ~~h. To visit the property which is the subject matter of the application.~~

4. Prior to conducting any assigned hearings on any applications, a Land Use Hearing Officer shall have a duty to certify in writing that they have no conflict of interest for any of the assigned application.

#### H. Statement of Freedom from Improper Influence

- 
1. No person who is or may become a party of record before the Land Use Hearing Officer nor anyone appearing on behalf of a party of record before the Land Use Hearing Officer shall communicate ex parte with any Land Use Hearing Officer about an application currently before ~~him~~them.
  2. No member of the Board of County Commissioners shall communicate ex parte with any Land Use Hearing Officer about an application currently before ~~him~~them. Communication between the Land Use Hearing Officer and the Board of County Commissioners acting as a collegial body shall be undertaken in accordance with the terms of this Code.
  3. In order to assure that the Land Use Hearing Officers are free from improper influence, a Land Use Hearing Officer shall neither initiate nor consider ex parte communications concerning a pending or impending application. ~~A Land Use Hearing Officer, however, may obtain the advice of a disinterested expert other than another Land Use Hearing Officer on law, planning, or zoning applicable to a proceeding before him, if he gives notice to the parties of record of the person consulted and the substance of the advice, and affords the parties of record reasonable opportunity to respond.~~
  4. Whoever shall accept an appointment as a Land Use Hearing Officer and any firm with which he is or may become associated, is, for a period of one year from the date of termination as holder of such office, hereby expressly prohibited from acting as agent or attorney in any proceeding, application or matter before any commission, board, agent or other office of County government, involving property which was the subject of an application during the time such person was in office.
  5. Ex parte communications as contemplated herein shall not include the required transmission of official documents by staff pursuant to the terms of this Code.

#### I. Disqualification of Land Use Hearing Officer in Particular Cases

The Land Use Hearing Officer shall disqualify ~~him~~themself from a particular case when it reasonably appears that ~~he~~they ~~has~~es a conflict of interest. When the Land Use Hearing Officer disqualifies ~~him~~themself, the case shall be randomly assigned to another Land Use Hearing Officer, if available. The Board of County Commissioners may request the County Attorney to provide an attorney otherwise qualified to sit as a Land Use Hearing Officer for an individual case where all hearing masters disqualify themselves.

(Ord. No. 01-30, § 2, 11-15-01)

---

## Sec. 10.03.02. Pre-Hearing Procedures

### A. Who May Request Amendment

1. The County Commission or Administrator may seek to rezone one or more parcels of land pursuant to the procedures prescribed herein.
2. The owner of one or more parcels of land may seek to rezone any such parcel pursuant to the procedures prescribed herein.

### B. Preapplication Conferences and Applications

1. Conference with the Administrator may be requested in those cases where an applicant is in doubt as to the necessity of filing an application for a rezoning, or Special Use Permit, or the specific zoning classification permitting the proposed use.
2. The applicant may request that the Administrator arrange a presubmittal conference to be attended by representatives of reviewing agencies and the applicant. The purpose of the presubmittal conference is to provide information to a potential applicant concerning the information needed for submittal and the standards and other requirements to be met. The reviewing agencies may include Planning and Growth Management Department (Natural Resources, Zoning Compliance, Traffic Operations, Stormwater Management, Water and Wastewater Utilities, and Adequate Public Facilities Determination), School Board, Environmental Protection Commission, and FDOT, if applicable.
3. All applications shall be typed or neatly printed on forms provided by the Administrator. Applications shall be filed with the Administrator who shall mark thereon the date of filing and shall retain the original. Copies of the application shall be available for public inspection in the offices of the Clerk of the Board and the Administrator.

### C. Time of Hearing by the Land Use Hearing Officer and Written Advice Recommendation

1. The Administrator shall set the matter for hearing before a Land Use Hearing Officer after the completed application has been filed in accordance with the published Land Use Hearing Officer Hearing Schedule.
2. Continuance(s) of the public hearing shall be permitted in accordance with the procedures and requirements set forth below. However, in no case shall the public hearing be continued to a hearing date that is more than six months after the originally scheduled hearing date. If a public hearing is not held on the application within the required time frame, the application shall be withdrawn from processing by the Zoning Administrator. The cancellation by the County of a public hearing date during the six-month period due to County closures during emergency events, shall cause the calculation of time for the public hearing deadline to be tolled for each application until the next scheduled public hearing date at which a public hearing takes place. The calculation of time for the six-month deadline for an application shall resume at the next public hearing that the application is scheduled. The hearing time frame shall not apply to an application that is associated with either an application to amend the Hillsborough County Comprehensive Plan, an application for a new Development of Regional Impact (DRI), or an application to amend an existing DRI. For any application that has been reopened or remanded for further hearing, the calculation of time for the six-month deadline shall start from the newly scheduled remanded/reopened hearing date for the application.
3. The public hearing shall be continued by the Land Use Hearing Officer to a date certain if the continuance request is filed in writing by the applicant with the Administrator at least three (3) business days prior to the published staff report filing deadline for the scheduled hearing, or by the County if additional time is needed to complete review. Any continuance request submitted by the applicant to the Administrator less than three (3) business days prior to the published staff report filing

---

deadline for the scheduled hearing will be shown on the agenda to be heard but may be continued at the hearing at the discretion of the hearing officer only if the applicant can demonstrate the reason for the continuance was not known in a timely manner, thereby preventing the applicant from requesting the continuance prior to the deadline.

4. ~~The Land Use Hearing Officer may reopen a hearing for extraordinary cause. Action to reopen a hearing must take place within seven (7) calendar days of the initial close of the hearing. To reopen a hearing, the Land Use Hearing Officer must file with the Administrator an affidavit outlining the reasons for such reopening. Such reopenings shall only be ordered when the Land Use Hearing Officer has additional competent substantial evidence, not previously available, that would affect the Land Use Hearing Officer's recommendation, where it is necessary to avoid undue injury to the County or the applicant.~~
5. ~~Upon making a finding that the hearing should be reopened, the Land Use Hearing Officer shall schedule the hearing for a date not to exceed 45 calendar days from the initial close of the hearing. A reopened hearing shall be noticed as an original hearing with notice also going to any persons who appeared at the original hearing. The cost of providing notice shall be borne by the County. The reopened hearing shall be concluded within 30 calendar days of the date established by the Land Use Hearing Officer in his affidavit for reopening the hearing.~~
6. The Land Use Hearing Officer shall file ~~his~~their ~~written advice~~written advice~~recommendation~~ with the Administrator within fifteen (15) business days of the close of the hearing, with a copy being provided to the Clerk of the Board. The Clerk of the Board shall, on the same calendar day or the next working day, mail or otherwise deliver a copy of the written advice~~recommendation~~ to the applicant, and to any other person who has supplied the Clerk with a self-addressed stamped envelope for the purpose.

D. Notice of Public Hearing Before the Land Use Hearing Officer

1. In cases where zoning amendments are initiated by the County, public notice and hearings shall be in accordance with the provisions of Section 125.66(4), the Florida Statutes, with appropriate modifications to indicate that the hearing is to be held by the Land Use Hearing Officer.
2. In all other cases, upon establishment of a public hearing date, notice of the public hearing shall be given:
  - a. By the Administrator posting a sign(s) no less than 30 calendar days prior to the hearing date in a conspicuous place upon the property which is the subject of the application; and
  - b. By the Administrator causing the publication of a notice one time no less than fifteen (15) calendar days prior to the hearing date in a newspaper of general circulation in Hillsborough County; and
  - c. By the applicant mailing notice no less than thirty (30) calendar days prior to the hearing date. Such notice shall be completed in the manner outlined in Subsections E and F below and the applicant shall submit proof of mailing to the Administrator no more than seven (7) calendar days after the notice deadline.
  - d. In the case of hearings remanded from the Land Use Appeals Board to the Land Use Hearing Officer, notice shall be given pursuant to subsections a. through c., above, and also by the applicant mailing notice no less than thirty (30) calendar days prior to the hearing date to all parties of record from the initial Land Use Hearing Officer hearing, as defined in LDC 10.03.06.A.1 and 10.03.06.A.3. The applicant shall submit proof of said mailing to the Administrator no more than seven (7) calendar days after the notice deadline.
3. Continuance fees shall be required from the applicant for all continuances requested by the applicant by the deadline described in Section 10.03.02.C.3. Continuance fees and additional notice shall be

- 
- required from the applicant for all other continuances either requested by the applicant or caused by the actions or inactions of the applicant.
4. If at any time, the contents of any form of notice, required or otherwise, is determined to be incorrect, the application shall be determined to be out of order and shall be required to continue to the next available hearing, after the prior scheduled meeting, and renote shall be required in order to make the appropriate corrections. Additionally, failure to meet any notice deadlines required in this code shall cause the application to be determined to be out of order and the application shall be required to continue to the next available hearing, after the prior scheduled meeting, and renote shall be required.
  5. Notice of continuances for applications determined to be out of order due to the actions or inactions of the applicant, as described in Subsection D.4 above, shall be required in the following manner:
    - a. The applicant shall mail notice of the new hearing date to which the application has been continued, as determined by the Administrator, no less than thirty (30) days prior to the new hearing date. The applicant shall submit proof of mailing to the Administrator no more than seven (7) calendar days after the notice deadline.
    - b. The Administrator shall cause the posting of a sign(s) within ten (10) days following the hearing from which the application is being continued.
  6. Notice of continuances requested by the applicant prior to the deadline, as described in Subsection C.3 above, shall be required in the following manner:
    - a. The applicant shall mail notice of the requested continuance and new hearing date to which the application is being continued no less than seven (7) days prior to the hearing date from which the application is being continued. The applicant shall submit proof of mailing to the Administrator no more than seven (7) calendar days after the notice deadline.
    - b. The Administrator shall cause the posting of a sign(s) no less than three (3) calendar days prior to the currently scheduled hearing that is being continued.
  7. For other continuances requested by the applicant and for continuances caused by any actions or inactions of the applicant, except for applications determined to be out of order, notice shall be required in the following manner:
    - a. The applicant shall mail notice of the new hearing date following approval of the continuance. The notice shall be mailed no less than thirty (30) days prior to the hearing date to which the application has been continued. The applicant shall submit proof of mailing to the Administrator no more than seven (7) calendar days after the notice deadline.
    - b. The Administrator shall cause the posting of a sign(s) following the approval of the continuance within ten (10) days of the decision to reschedule the hearing.
  8. For continuances not caused by any actions or inactions of the applicant, notice shall be required in the following manner:
    - a. The Administrator shall cause the posting of a sign(s) following the approval of the continuance within ten (10) days of the decision to reschedule the hearing.
  9. Proof of Mailing: The applicant shall provide ~~Planning and Growth Management Development Services~~ Department Staff with the documentation listed below as proof of mailing in fulfillment of the notice requirements. Failure to submit proof of mailing in a timely manner shall result in the application being continued to the next available hearing, unless said continuance will cause the hearing to continue beyond the maximum time frame prescribed in Subsection C.1 above, in which case the application shall be withdrawn from processing by the Administrator.
-



- 
- a. A completed copy of the official notice letter.
  - b. An original "certificate of mailing" from the U.S. Post Office listing the names, mailing addresses and property folio numbers of all noticed parties.
  - c. A signed and notarized affidavit from the applicant acknowledging completion of the notice requirements.

E. Property Owners' Notice

1. Notice shall be mailed to all owners of property, as reflected on the current year's tax roll, and, where common property lies within the required notice distance, to all condominium and owners' associations, lying within 500 feet in every direction when the subject parcel is within the Agricultural and Residential-1 Categories of the Comprehensive Plan, and 300 feet in every direction when the parcel is within any of the remaining Plan categories. If a subject parcel contains more than one land use designation, the greatest applicable notice distance shall apply.
2. If the notification requirements of Paragraph 1 immediately above result in the requirement to notify more than 200 property owners, the applicant may seek administrative relief through the Administrator for consideration of reducing the number of parties which must be notified while still providing sufficient notice.
3. A reduction in the number of notices may occur in cases where alternative methods of notice can provide sufficient notice and the parties which would receive the alternative notice would be only those which are least likely to be impacted by the proposed amendment. The size of the parcel and the intensity of the development around the subject parcel will be considered. However, large sized projects can expect to be required to provide larger numbers of notices because of the greater area which the project directly impacts. The Administrator shall be required to make a finding that the following criteria have been met:
  - a. In no case would notice be waived to property owners less than 250 feet in every direction from the subject property in the rural areas and 150 feet in every direction from the subject property in urban areas; and
  - b. The alternative form of notice shall reasonably alert the parties of the amendment action (for example, a condominium complex which has only a small portion of its property within the notification distance and no part of its property within the distance requirement in Paragraph 1 immediately above may receive notice to its Board of Directors more than the minimum requirement of 30 calendar days rather than the proof of mailing notice required to each condominium owner); and
  - c. The number of notices required shall not be less than 200 unless the alternative notice method affects a group of property owners such that it is impossible to notice one property owner without noticing the entire group; and
  - d. The notice pattern shall be as uniformly applied in all directions as is physically possible.

F. Neighborhood Bill of Rights

The Board of County Commissioners recognizes that citizens of neighborhoods have an interest in participating in the planning process and development issues which affect them. To achieve that end, notice shall be provided by the applicant to all duly registered organizations on the Registry of Neighborhood Organizations and Civic Associations whose geographic boundaries lie within one mile of the subject site for any proposed development requiring final approval of the Board of County Commissioners or the LUHO. Accordingly:

- 
1. The Hillsborough County Office of Neighborhood Relations shall maintain a Registry of Neighborhood Organizations and Civic Associations.
  2. To register as a Neighborhood Organization, an organization shall provide the name and address of its authorized representative(s), a map which graphically identifies the boundaries of its neighborhood, and any other relevant information as may be required by the Administrator. Additionally, the organization shall provide evidence it meets all of the following requirements:
    - a. The organization is comprised of residents within a defined geographic area.
    - b. There are a minimum of 50 households within the defined geographic area.
    - c. The residents of at least 50 percent of all households in the defined geographic area are members of the organization.
    - d. That membership in the organization is established by virtue of residency or occupancy in the defined geographic area.
    - e. That the organization maintains officers or representatives, including the method by which such officers or representatives are selected. The method may be documented by copies of by-laws, covenants or deed restrictions if the method is specified therein.
    - f. That the organization has a means to appoint a contact person.
    - g. That the organization's officers or representatives are authorized to act on behalf of the organization. This authorization may be documented by copies of by-laws, covenants or deed restrictions.
  3. To be registered as a Civic Association, the association must be chartered, area-wide and with dues paying members. The association must submit a copy of its charter with the application. Membership on the registry will allow the association to receive courtesy notice of applications within its area. However, receipt of the notice will not qualify the association as a party of record.

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 may ~~must~~ submit same to the Land Use Hearing Officer at the public hearing before him~~them~~ 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~~ will review department and agency reports including any recommendations and conditions, the record of the Land Use Hearing Officer and their written advice, and any evidence or testimony submitted into the record subsequent to the hearing before the Land Use

---

~~Hearing Officer up to the time of action on the application by the Board of County Commissioners as defined in the Hillsborough County Land Development Code, as amended, unless additional evidence 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 staffs reaching its ~~final~~ recommendation to the Board of County Commissioners or Land Use Hearing Officer, as appropriate.

H. County Department Reports

- 1. When an application has been set for public hearing, the Administrator shall coordinate and assemble the reviews of other departments and governmental agencies having an interest in the application and shall prepare a report summarizing the factors involved and the agency or departmental ~~findings,~~ recommendations, and conditions. This report shall be available at the offices of the Administrator to all persons six calendar days prior to the hearing. The report shall be filed with the Clerk of the Board for inspection by the public.
- 2. The Planning Commission staff shall, for all applications, prepare a separate written statement outlining the points of compliance or noncompliance with the Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County Comprehensive Plan adopted by Hillsborough County pursuant to the Hillsborough County Local Government Comprehensive Planning Act of 1975, as amended, and shall file said statement with the Administrator at least 12 calendar days prior to the date of the hearing before the Land Use Hearing Officer, with copy thereof submitted to the Clerk of the Board with the Administrator's report referenced above.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 99-25, § 2, 11-18-99; Ord. No. 99-26, § 2, 11-18-99; Ord. No. 00-21, § 2, 5-18-00; Ord. No. 00-38, § 2, 11-2-00; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 03-9, § 2, 6-5-03; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 05-22, § 2, 11-17-05; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 09-53, Item Q, 6-11-09, eff. 10-1-09; Ord. No. 15-32, § 2(Exh. A) (15-1270), 12-8-15, eff. 12-14-15; Ord. No. 20-17, § 2(Exh. A), 9-24-20, eff. 10-2-20; Ord. No. 21-18, § 2(Exh. A), 5-20-21, eff. 5-27-21; Ord. No. 21-41, § 2(Exh. A), 10-21-21, eff. 10-28-21)

---

### Sec. 10.03.03. Public Hearing Before the Land Use Hearing Officer

#### A. Participants

The participants before the Land Use Hearing Officer shall be the applicant, County agencies, proponents, and opponents, inclusive of the public and witnesses with relevant testimony. The proponent shall be defined as a participant in favor of the application, exclusive of the applicant; whereas, the opponent shall be defined as a participant against the application. Both definitions are inclusive of the public and any other parties of record.

#### B. Order of Presentation

The order of appearance and total time allotments shall be as follows:

1. Applicant and witnesses; proposal: 15 minutes;
2. Administrator; summary of the application, County staff and department findings: five minutes;
3. Planning Commission staff; statement of compliance or noncompliance: five minutes;
4. Proponents; argument for the application: 15 minutes;
5. Opponents; argument against the application: 15 minutes;
6. Staff; amended recommendations, if any: five minutes;
7. Applicant; rebuttal and summation: five minutes.

For good cause shown, the Land Use Hearing Officer may grant additional time.

#### C. Nature of Hearings

To the maximum extent practicable, the hearings shall be informal. Questioning shall be confined as closely as possible to the scope of direct testimony. The Land Use Hearing Officer may call and question witnesses as he deems necessary and appropriate. The Land Use Hearing Officer shall decide all questions of procedure.

#### D. Evidence

Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Any part of the evidence may be received in written form, and all testimony shall be under oath. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient, in itself, to support a finding by the ~~Board of County Commissioners~~Land Use Hearing Officer unless it would be admissible over objections in a civil action.

#### E. Matters To Be Considered by the Land Use Hearing Officer ~~in Making Recommendation~~

The Land Use Hearing Officer shall consider, ~~in addition to~~ all evidence presented at and prior to the hearing, including but not limited to the following as they may be ~~are~~ relevant ~~to in making his recommendation on~~ each application, which are not listed in any particular order:

1. The zoning history of the subject parcel.
2. Applicable zoning regulations promulgated by the Board of County Commissioners.
3. The Comprehensive Plan.
4. Reports and recommendations filed by reviewing agencies.
5. Uses permitted and the characteristics of the requested zoning classification.
6. Physical characteristics of the subject parcel and surrounding lands.
7. Impact on the surrounding transportation network.

8. Applicable goals, objectives, and policies contained in the Comprehensive Plan.
9. Availability and capacity of public services.
10. Nature of and impacts on surrounding land use.
11. Environmental impact of the use.
12. Applicable development standards promulgated by the Board of County Commissioners.

F. Application Summary and Basic Compliance Matters and Advice~~Findings and Recommendations~~ of the Land Use Hearing Officer

For each application, the recommendation of the Land Use Hearing Officer shall include produce written advice to the Board of County Commissioners that includes the following:

1. Summary of the request made in the application of evidence presented.
2. Identification of applicable regulations, technical standards and principles that are relevant to the review of the application~~Findings of fact.~~
3. Advice on all points of compliance and any points of non-compliance of the application with applicable regulations, technical standards and principles. All such advice shall include an indication of the basis of the advice~~Conclusions of law.~~
4. Advice on A finding of compliance or a finding of all any points of noncompliance with the Comprehensive Plan.
5. Advice on A recommendation to either approve approving or disapproving or taking any other action relative to the application or deny the application with reasons therefore specified, including any recommended conditions.

G. ~~Compliance With Comprehensive Plan~~

~~No application for rezoning, or Special Use Permit, shall be recommended for approval by the Land Use Hearing Officer unless it is found that the application is in compliance with the Comprehensive Plan.~~

HG. Record of Hearing Before the Land Use Hearing Officer

1. An audio recording of all public hearings before the Land Use Hearing Officer shall be recorded by the Clerk of the Board and also recorded by an official court reporter.
2. The record of the hearing before the Land Use Hearing Officer shall consist of:
  - ~~1. An audio recording of all public hearings before the Land Use Hearing Officer shall be recorded by the Clerk of the Board and also recorded by an official court reporter.~~
  - ~~2. The record of the hearing before the Land Use Hearing Officers shall consist of:~~
    - a. The application and accompanying documents.
    - b. Staff reports and recommendations.
    - c. All exhibits and documentary evidence.
    - ~~d. The summary, findings, conclusions, and recommendation of the Land Use Hearing Officer.~~
    - ed. The audio recording of testimony at the hearing.
    - fe. Verbatim transcript of the proceedings.
    - gf. All applicable laws, regulations, technical manuals, policies and any other authority applicable to the application.~~Applicable official Zoning Atlas sheets.~~

---

I. Posted Information in the Land Use Hearing Officer's Hearing Room

A copy of the recommendation of the Land Use Hearing Officer is required to be filed with the Clerk of the Board within 15 working days after the conclusion of the public hearing before said master. Persons wishing to receive a copy of the recommendation by mail may supply the Clerk of the Board with their name, address, and a stamped, self-addressed envelope for that purpose.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 06-18, § 2, 8-1-06)

---

## Sec. 10.03.04. Review by Board of County Commissioners

### A. Generally

The ~~record of the public hearing and the recommendation of the Land Use Hearing Officer will be considered by the~~ Board of County Commissioners shall consider each application for final decision at a public meeting noticed in accordance with the terms of this Code. The Board of County Commissioners may act on any application as part of a "Consent Agenda" which is established in accordance with criteria established by the Board of County Commissioners.

### B. Notice Date for Board of County Commissioners Consideration

1. Any person wishing to receive notice of the date when the Board will consider the application for rezoning or Special Use Permit may supply the Clerk of the Board with their name, address, and a stamped, self-addressed envelope for that purpose.
2. The Administrator shall arrange for the setting of a date and time at which the Board of County Commissioners will consider an application.
3. The Clerk of the Board shall give notice of the set date and time at which the Board of County Commissioners will consider an application for final decision by proof of mailing to the applicant and to parties who attended and presented evidence at the hearing before the Land Use Hearing Officer, and to parties who submitted written evidence to the Land Use Hearing Officer not less than two business days prior to the Land Use Hearing Officer hearing. Such notice shall be mailed at least 20 calendar days prior to the date set.

### C. Evidence Before the Board of County Commissioners

1. The record before the Board of Commissioners upon consideration of an application shall ~~be include department and agency reports including any recommendations and conditions,~~ the complete record of the hearing before the Land Use Hearing Officer, ~~and their written advice and any evidence or testimony submitted into the record subsequent to the hearing before the Land Use Hearing Officer up to the time of action on the application by the Board of County Commissioners, 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 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.~~
23. 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 ArgumentOpen Record Period

1. ~~The Board of County Commissioners shall consider any evidence or testimony submitted into the record subsequent to the hearing before the Land Use Hearing Officer up to the time of action on the application by the Board of County Commissioners. only the record of the proceedings before the Land Use Hearing Officer, unless additional evidence 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.~~

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. ~~Subsequent to the close of the Land Use Hearing Officer hearing on an application, any person may submit written or documentary materials to the Administrator until 2:00 p.m. on the business day preceding the day of consideration by the Board of County Commissioners. The Administrator shall include such written or documentary materials in the record for the application. 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 noticed. 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 notice 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. Testimony before the Board of County Commissioners~~Oral Argument~~

1. The Board shall allow public testimony ~~by Parties of Record~~ at its meeting to consider any application~~the Land Use Hearing Officer's recommendation for any item on the Regular that is not part of the Consent Agenda. 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.~~
2. For applications which are subject to public testimony~~oral argument~~, the order of appearance and total time allotments shall be as follows:
  - a. Applicant ~~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. Testimony Party of record~~oral argument~~ by proponents: ten minutes.
  - e. Testimony Party of record~~oral argument~~ by opponents: ten minutes.
  - f. Staff; amended recommendations, if any: five minutes.
  - g. Applicant; rebuttal: five minutes.

F.3. ~~If the Board finds in its reasonable discretion that the application requires oral argument has raised issues that require further Land Use Hearing Officer review, then the Board shall have reserves the right to continue the application and direct any appropriate action by the Administrator or to remand the application for further proceedings to by 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 ~~any~~the remanded proceedings, the Land Use Hearing Officer shall file ~~an~~amended written advice~~recommendation which that~~ 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.

GF. 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. If the continuance request is granted, ~~T~~he 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 reasonable discretion~~for unique circumstances~~, the Board may continue an application~~petition~~ at the Board meeting without notification.

G. Consideration and Final Decision of the Board

1. The Board shall consider department and agency reports including any recommendations and conditions, the complete record of the hearing before the Land Use Hearing Officer and their written advice, and any evidence or testimony submitted into the record subsequent to the hearing before the Land Use Hearing Officer up to the time of action on the application by the Board of County Commissioner~~the record of the hearing before the Land Use Hearing Officer, any additional evidence and oral argument introduced pursuant to the terms herein~~ and shall approve or deny the application by resolution. Any resolution denying an application~~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 such denial~~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.
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; Ord. No. 21-18, § 2(Exh. A), 5-20-21, eff. 5-27-21)

---

## Sec. 10.03.05. Modification and Withdrawal of Applications

### A. Modification

1. Requests to modify an application filed prior to the mailing of notice for the hearing before the Land Use Hearing Officer shall be granted by the Administrator as a matter of right. If the Administrator finds, based upon the nature of the requested modification, that the modification can be accomplished in a timely fashion so as to not disrupt original review periods, then said review shall proceed and a hearing shall be held within the ~~original 60 or 90 calendar day~~ review period referenced in Section 10.03.02.C.1.
2. If the Administrator finds that additional time is required to review said request, then County staff shall have an additional period to review said request. The scheduled public hearing before the Land Use Hearing Officer shall be convened and continued to a date certain to allow additional staff review.
3. Requests to modify an application, filed after the date of mailing of notice for the hearing before the Land Use Hearing Officer, shall be considered by the Land Use Hearing Officer at the public hearing. The Land Use Hearing Officer shall grant said request as a matter of right.
4. Any modifications or changes, as listed in Section 5.03.04, to a general development plan filed less than 20 calendar days prior to the hearing shall require a continuance of the application to future hearing.
5. If the Administrator finds, based upon the nature of the requested modification and the review criteria contained in 10.03.03.E herein that renote of the application as modified is required, then the Administrator shall establish a continuance date for the public hearing and shall direct the renote of the application by proof of mailing as modified. During the interim, appropriate staff shall have an opportunity to review said application as modified and submit recommendations.
6. If the Administrator finds, based upon the nature of the requested modification, the review criteria contained in 10.03.03.E above, and County staff comment that additional review is required, then the Administrator shall establish a continuance date for the public hearing. During the interim, appropriate staff shall have an opportunity to review said application as modified and submit recommendations.
7. If the requested modification does not require notice or review, then the Land Use Hearing Officer shall consider the application as modified and submit a recommendation in accordance with the terms contained in this Code.
8. Requests to modify an application filed after the conclusion of the hearing before the Land Use Hearing Officer, but no less than ten days prior to the scheduled review by the Board of County Commissioners, shall be referred to the Administrator who shall grant said request as a matter of right. The Administrator shall assign a new public hearing date and thereafter process the application as modified in the same manner as a new application. The applicant, shall, within three days of requesting said modification mail notice of the new public hearing date to all parties of record. Requests to modify an application filed within ten days before the scheduled review by the Board of County Commissioners shall be considered by the Board on a case by case basis. If the remand is granted, the applicant shall mail notice of the new public hearing date to all parties of record in accordance with the notice procedures outlined in Section 10.03.02.D.
9. The modification must exhibit changes as described in 5.03.04.D Major Modifications in order for the Administrator to assign a new hearing date as a matter of right. Applicable fees for processing a major modification shall be assigned by the Administrator.
10. With the exception of those requests which may arise during the course of the hearing before the Land Use Hearing Officer, all requests for modifications shall be in writing and shall be filed with the Clerk of the Board and the Administrator.

---

B. Withdrawal of Application

1. The applicant has the right at any stage of the proceeding to withdraw the application upon written notification to the Administrator.
2. The applicant may also withdraw the application on the record, either verbally or in writing, at the public hearing or public meeting where the application is scheduled to be heard by the Land Use Hearing Officer and/or the Board of County Commissioners.
3. Nothing contained herein shall authorize a Land Use Hearing Officer to waive or refund any filing fee.

(Ord. No. 99-25, § 2, 11-18-99; Ord. No. 99-26, § 2, 11-18-99; Ord. No. 04-46, § 2, 11-4-04; Ord. No. 06-18, § 2, 8-1-06; Ord. No. 08-29, § 2, eff. 2-1-09; Ord. No. 10-9, § 2, Item A(10-0170), 5-27-10, eff. 10-1-10)