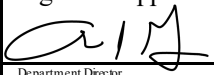
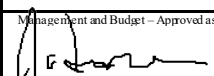




**Hillsborough  
County Florida**

A report presented to the  
Board of County Commissioners  
on April 12, 2022  
from Development Services Department  
regarding  
Land Use Meeting Process Options

Sign-Off Approvals	
	4/5/2022
Department Director	Date
Management and Budget – Approval as to Financial Impact Accuracy	
	4/6/2022
County Attorney – Approval as to Legal Sufficiency	Date
Assistant County Administrator	
	Date

- ☐ Consent Section – Informational purposes only. (*No discussion anticipated*)  
☐ Consent Section – Board requested report. (*No discussion anticipated*)  
☒ Staff Reports Section

Insert File

**Note:** Staff reports scheduled for the Consent or Staff Report sections may not contain any

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.

Following the workshop presentation, the Board focused its discussion primarily on two items, the Zoning Hearing Master process for rezoning applications and the limitations it places on the Board's review, and whether the Board should adopt a process for disclosure of ex-parte communications (oral or written communications between Board members and individuals regarding zoning applications, which occur outside of a Board meeting on the rezoning application).

This report will recap the considerations raised by the Board on each of these items, identify options for process changes and provide information on the processes other jurisdictions have in place regarding these items.

One element of the rezoning process that is a consideration in both the ZHM process and in ex-parte communications is the "record" associated with each rezoning application. The record is the unique body of information and evidence that is compiled for each rezoning application including the materials submitted in support of a rezoning application, staff reports, agency comments and evidence and testimony submitted by any interested member of the public. Each decision on a rezoning application must be supported by competent substantial evidence that is contained in the record for that application.

#### Zoning Hearing Master (ZHM) Process

The current ZHM process is as follows:

- ZHM conducts a public hearing for new rezoning applications and major modifications to existing Planned Development zonings
- The ZHM process establishes the record for BOCC consideration which closes after the ZHM public hearing
- ZHM renders a recommendation to the BOCC on each application
- Board considers the ZHM recommendation and record established prior to and during ZHM public hearing
- If the Board seeks additional substantive information to be added to the record this requires a remand to the ZHM to re-open the record and allow additional information and testimony
- Board acts on the application and if different from ZHM recommendation, the Board shall identify all points of compliance or noncompliance with the Comprehensive Plan and provide specific reasons for the decision

Board comments on this process identified both challenges or questions associated with this process as well as some of its merits.

#### Challenges/Questions:

- The process is complex and the requirements we put on the public are onerous and difficult
- The existing process creates barriers for community engagement
- Constraints put on the Board by being limited to ZHM record
- Weight given to ZHM recommendation

#### Merits:

- ZHM process vets and narrows the issues for Board consideration
- The ZHM process enhances the efficient use of the Board's time
- The process provides professional judgement that serves as another leg of the stool for Board consideration

Based on a review of the zoning processes followed by other counties in Florida it appears that each county surveyed provides for a public hearing by another reviewing body (such as a Planning and Zoning Board or Commission) prior to consideration of the application by the BOCC. The initial public hearing results in a recommendation to the BOCC and the establishment of an initial record. However, the majority of the jurisdictions do not limit the BOCC to considering the record of the hearing below and many require an additional full public hearing be held by the BOCC.

#### Options Regarding ZHM Process for Board Consideration

- Eliminate ZHM process and have all rezoning applications be heard directly by the Board
- Maintain ZHM process but have all rezoning applications be heard in a second public hearing before the Board not limited to the ZHM record

Either of these options would remove the constraints on the information the Board could consider, however, these options would not allow for a consideration of any rezoning applications as part of a consent agenda.

The Board may also consider amending the Land Development Code to provide for a hybrid process that continues to observe the requirements for due process, and includes some or all of the following elements:

- Maintain the ZHM process with established criteria for consent agenda items, and provide that the Board would hold a public hearing (not bound by the ZHM record) on applications not meeting the criteria for the consent agenda
- Provide for an open record period between the ZHM hearing and Board consideration whereby the record can be supplemented through the submission of additional written or documentary materials
- Amend the information required to be included in ZHM recommendations to the Board such that the ZHM identifies relevant issues associated with each application, provides recommendations on basic compliance matters and identifies any issues for consideration by the Board

<b>County</b>	<b>Role of Reviewing Authority in Rezoning Process</b>	<b>BOCC Process for Rezoning</b>
Collier	Planning Commission holds public hearing and issues a recommendation	BOCC holds a full public hearing on each rezoning
Lee	Hearing Examiner conducts public hearing on rezonings	Similar to Hillsborough County's process, the BOCC considers the recommendation of the Hearing Examiner, limited to the Hearing Examiner record. Only persons who were participants at the hearing before the Hearing Examiner are permitted to speak at the BOCC public hearing, and testimony is limited to record below (with an exception for "additional evidence" that was undiscoverable before BOCC consideration of application)
Manatee	Planning Commission (PC) holds a public hearing and issues a recommendation	BOCC holds a full public hearing on each rezoning
Miami-Dade	Community Zoning Appeals Board process	Rezoning decisions are delegated to Community Zoning Appeals Boards, subject to appeal to the BOCC
Orange	<p>1. Standard Rezoning: Planning and Zoning Commission (PZC) holds public hearing and issues recommendation</p> <p>2. Planned Development (PD) Rezoning: PZC holds a public hearing and issues a recommendation</p>	<p>1. Standard Rezoning: BOCC may accept the recommendation of the PZC or call its own public hearing. PZC recommendation may be appealed to BOCC. PZC recommendations on standard rezonings are presented to BOCC on the consent agenda. If BOCC calls its own public hearing, it is unrestricted to the prior record.</p> <p>2. PD Rezoning: A full public hearing before BOCC is required for all PD rezonings.</p>
Pasco	Planning Commission (PC) holds a public hearing and issues a recommendation on the amendment	BOCC holds a full public hearing on each rezoning (not limited to prior record)
Pinellas	Local Planning Agency holds a public hearing and issues a recommendation on the amendment	BOCC holds a full public hearing on each rezoning (not limited to prior record)
Polk	Planning Commission (PC) holds a public hearing and issues a recommendation	*Land development regulations rely primarily on Comprehensive Plan designations rather than zoning designations * BOCC holds a full public hearing on each land use change
Sarasota County	Planning Commission (PC) holds a public hearing and issues a recommendation on the amendment	BOCC holds a full public hearing on each rezoning (not limited to prior record)

## Ex parte Communications

As noted earlier in this report, each decision on a rezoning application must be supported by competent substantial evidence that is contained in the record for that application. For the purposes of rezoning applications, ex parte communications are those that take place outside of the prescribed hearing process that are not otherwise captured as part of the record.

For example, a conversation outside of the hearing process relating to a pending rezoning application would be considered an ex parte communication, while information related to the application conveyed through written correspondence that is entered into the record would not be considered an ex parte communication.

Florida case law states that ex parte communications are considered to be presumptively prejudicial to quasi-judicial processes such as consideration of rezoning applications. As a result of this, the Board has generally been advised to avoid ex parte communications regarding pending zoning applications for reasons including protecting the defensibility of any decisions the Board may make.

In response to the established caselaw, the Florida Legislature adopted Section 286.0115, Florida Statutes, which provides for the adoption of an ordinance or resolution removing the presumption of prejudice from ex parte communications by establishing a process to disclose any ex parte communications. Disclosure of an ex parte communication on the record will allow the parties to address or rebut the substance of the communication prior to the governing body's final decision on the application.

As was the case with the ZHM process, Board discussion on ex parte communications included considerations regarding maintaining the current setting where ex parte communications are not authorized and considerations for adopting a process to authorize ex parte communications subject to a disclosure process.

### Current Condition:

- Protects the decision makers from concerns about improper influence
- Ensures that information shared with Commissioners is documented
- Could result in unanticipated consequences or potential abuses if the process were wide open

### Adoption of Disclosure Process:

- Would allow greater access to hear from constituents
- Applicants requesting meetings pre-filing may be seeking to have access to elected officials that the general public does not have
- Would remove the presumption of prejudice
- Could help the Board gain knowledge on issues

A review of how other Florida counties handle ex parte communications was conducted and the results are summarized as part of this report. Based on the counties reviewed, one prohibits ex parte communications, while two have adopted formal disclosure procedures and others discourage ex parte communications but require disclosure on the record of any that occur.

### Options Regarding Ex Parte Communications

- Adopt a formal disclosure process in accordance with Section 286.0115, Florida Statutes
- Do not authorize ex parte communications, but provide for enhanced opportunities for written public input that can be viewed by Board members and the public, such as by establishing an open records period between the conclusion of the ZHM hearing and Board consideration of the rezoning application

<b>County</b>	<b>Allowance for Ex Parte Communications, and Description of Procedures</b>
Collier	Yes, subject to disclosure on the record
Lee	Not permitted
Manatee	Yes, subject to disclosure on the record (procedures approved by resolution )
Orange	Yes. Parties and board members are advised to disclose ex parte communications at the outset of each hearing. Advisory language is included on the agenda.
Pasco	Yes. Sec. 303.8 of the Land Development Code implements Section 286.0115, F.S.
Pinellas	Ex parte contacts are discouraged; if they inadvertently occur, they are to be placed on the record
Polk	Disclosures of any ex parte communications are required prior to a public hearing on a quasi-judicial item
Sarasota County	Board Procedures discourage ex parte communications but provide for disclosure if they occur.