

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-6
TITLE: Administrative Procedure for Scheduling and Conducting Matters Coming Before the Lee County Hearing Examiner	ADOPTED: 12/14/88
	AMENDED: 8/5/92, 6/8/94, 8/31/94, 3/20/96, 6/3/97, 3/20/01
	ORIGINATING DEPARTMENT: Hearing Examiner

PURPOSE/SCOPE:

The purpose of administrative code 2-6 is to establish procedures for the conduct of public hearings before the Hearing Examiner. This administrative code supplements Lee County's Land Development Code. If there is any conflict between the administrative code and the Land Development Code, the provisions of the Land Development Code will prevail.

POLICY/PROCEDURE:

SECTION 1. FILING AND SCHEDULING OF CASES

- 1.1 Filing Appeals and Documentary Evidence Relating to Appeals from Administrative Actions
 - A. Appeals from administrative actions must be filed with the Hearing Examiner on forms provided by the Hearing Examiner, and fees must be paid at the Department of Community Development (DCD) on the same date or no later than the 30th day of the appeal period. All administrative appeals will be heard in accordance with the provisions of Section 34-145 of the Lee County Land Development Code.
 - B. Within five (5) working days after receipt of an appeal and payment, the Hearing Examiner will provide the County Administrator and the County Attorney, or their designees, with copies of the appeal and schedule the matter for a public hearing as set forth in Section 1.3 B. below.
- 1.2 Filing Applications for Rezoning, Variances and Special Exceptions
 - A. All applications must be submitted to the Department of Community Development on forms provided by DCD.
 - B. Fees must be paid at the time of application submittal in accordance with the external fees and charges manual.
 - C. No application for an action required by this chapter to proceed through the public hearing process may be placed on a schedule to be heard by the hearing examiner until:
 - a. If a Planned Development, after the department has finalized a written staff report on the requested action OR sixty days after the department finds the application sufficient, whichever comes first.
 - b. For other than a Planned Development, after the department has finalized a written staff report OR sixty days after submittal of the complete application, whichever

comes first.

The department will produce a written (staff) report summarizing the County Staff's position regarding the subject application. In the case of a conventional or planned development zoning, the staff report must be published at least 14 days prior to the public hearing. In the case of a special exception or a variance the staff report must be published at least 7 days prior to the public hearing. It is the intent of this section to prohibit any hearing from taking place until the staff report has been published for the specified time.

1.3 Scheduling Cases

- A. The Hearing Examiner will schedule all hearings for appeals of administrative actions. The date may be no sooner than fifteen (15) nor more than thirty (30) working days after copies of the appeal have been distributed in accordance with Section 1.1.B. above.
- B. To the extent reasonably possible and excluding holidays:
 - (1) Regularly scheduled hearings will be held on at least two (2) days each week; a third day may be used for continuations of hearings.
 - (2) Rezoning applications will be heard on Wednesdays or Thursdays.
 - (3) All other matters will be heard on Thursdays.
 - (4) Continued hearings may be heard on any work day.
- C. In order to provide the most efficient and expeditious hearings for all matters, DCD, after consulting with the Hearing Examiner, may vary the schedule set forth in Subsection 1.3 B.

1.4 Notice

Notice of hearings will be provided in accordance with AC 2-8.

SECTION 2. CONDUCT OF HEARINGS

2.1 Recording

The Hearing Examiner will provide for stenographic recording of all hearings by a court reporter. The recording will be preserved as a public record but will not be routinely transcribed. Any person may request and obtain a transcript of the record from the court reporter at their own expense.

2.2 Order of Proceedings

- A. Hearings will be conducted in an informal but courteous and professional manner. To the extent reasonably possible, the order of proceedings will be as follows:
 - (1) Hearing Examiner announcement of the matter to be heard, explanation of the rights and responsibilities of all interested persons as well as an explanation of any future proceedings that may occur in relation to the matter to be heard.
 - (2) Presentation by applicant, appellant or representative.

- (3) Brief synopsis by County staff describing the nature of the application or appeal.
- (4) Staff introduction of exhibits.
- (5) Staff summary of issues and recommendations.
- (6) Testimony or legal argument by persons who either support or oppose the application or appeal, or who have questions or concerns.
- (7) Cross examination of witnesses by staff.
- (8) Cross examination of witnesses by applicant.
- (9) Final argument by the applicant or appellant.
- (10) Final argument by the staff.
- (11) At the discretion of the Hearing Examiner, the applicant, appellant and other participants may be permitted to respond to the final staff recommendations.

B. Taking Testimony

- (1) Statements of counsel or authorized representatives will be considered argument and not testimony unless identified to the Hearing Examiner as based upon actual knowledge of the matters which are the subject of the statements and are testified to under oath.
- (2) The Hearing Examiner has the authority to refuse to hear any testimony that, in the Hearing Examiner's opinion, is irrelevant, repetitive, defamatory or spurious.
- (3) All witnesses will be sworn and submit to reasonable cross examination.
- (4) Letters or other written statements from interested persons may be made a part of the record of the case but they will not constitute competent substantial evidence on which a decision can be based.

C. Taking Judicial Notice

The Hearing Examiner will take judicial notice of all state and county laws and regulations and may take judicial notice of such other matters as are generally recognized by Florida courts.

2.3 Continuances and Deferrals

- A. If, in the opinion of the Hearing Examiner, any testimony, documentary evidence or information presented at a hearing justifies allowing additional research or review in order to properly decide the case, then the Hearing Examiner, in his sole discretion, may continue the case to a specific time and date to allow for such research or review. The Hearing Examiner's decision to grant or deny such a continuance is not subject to review.
- B. Other deferrals or continuances may be granted in accordance with the provisions of Section 34-235 of the Lee County Land Development Code.

SECTION 3. DECISIONS & RECOMMENDATIONS

3.1 Site Visits

Prior to rendering a decision or recommendation, the Hearing Examiner will make a site visit unless the site is not accessible.

3.2 Final Decisions

- A. Except in extraordinary circumstances or complex matters, the Hearing Examiner will render a written decision within ten (10) working days after completion of the public hearings on all matters for which the Hearing Examiner is authorized to render a final decision.
- B. The Hearing Examiner's decision must contain the following:
 - (1) Identification of the subject matter or property involved and the action requested by the applicant or appellant.
 - (2) Summary of the evidence and testimony in the matter, including the recommendations of the County staff.
 - (3) Findings of fact and conclusions of law based on the evidence and testimony in the matter.
 - (4) In cases involving an appeal of administrative action, whether to grant or deny the appeal and specify any administrative action to be taken by virtue of a decision granting an appeal.
 - (5) As to other matters, whether to grant or deny the application or to grant the application with conditions and specifying any such condition.
- C. All decisions will be delivered or mailed by the Hearing Examiner to participants and to the offices of the Board of County Commissioners on the day they are rendered or on the next regular working day thereafter. For the purpose of this administrative code, participants are defined as any person who appears at a hearing examiner proceeding in person, or through counsel or authorized representative, and provides legal argument, testimony or other evidence. Participants also include county staff and the applicant.

3.3 Zoning Recommendations

- A. Except in extraordinary circumstances or complex matters, the Hearing Examiner will render a written recommendation for action by the Board of County Commissioners within ten (10) working days after completion of the public hearing on all matters for which the Hearing Examiner is required to provide recommendations to the Board of County Commissioners.
- B. The Hearing Examiner's recommendation must contain the following:
 - (1) Identification of the property involved and the action requested by the applicant or appellant.
 - (2) Findings of fact and conclusions of law based on the evidence and testimony in the matter.

- (3) The recommendation of the Hearing Examiner whether to grant or deny the application or to grant the application with conditions and specifying any such conditions.
- C. The Hearing Examiner's Office will prepare a summary of the evidence and a summary of the testimony or, in lieu thereof, a transcript of the proceedings.
 - D. All recommendations and copies of the summaries of evidence and testimony (or transcript) will be delivered or mailed by the Hearing Examiner to the Offices of the Board of County Commissioners, the Applicant, and the appropriate Lee County Department(s) on the day they are rendered or on the next regular working day thereafter. DCD will then schedule the matter for hearing by the Board of County Commissioners in accordance with Chapter 34 of the Lee County Land Development Code as it may be amended or replaced from time to time.
 - E. Participants will be provided copies or notice of the recommendation, at the discretion of the Hearing Examiner, in one of the following manners:
 - (1) In rezonings with fewer than 25 participants, and where the recommendation is less than 50 pages in length, a copy of the recommendation may be delivered or mailed to each participant on the day it is rendered or the next regular working day thereafter.
 - (2) In rezonings with more than 25 participants, or the recommendation exceeds 50 pages in length, the Hearing Examiner may:
 - (a) provide the recommendation as set out in Paragraph E.1; or
 - (b) publish notice of the recommendation for no less than two consecutive Sundays in a newspaper(s) of general circulation in Lee County and incorporated areas therein. The notice must be a minimum of 2 columns in width by 3 inches in length, and it may not be located in the classified section of the newspaper. The notice must advise where the recommendation is available for review and duplication; or
 - (c) provide the recommendation, without the summary of evidence and testimony, by mail on the day it is rendered or on the next regular working day thereafter. The recommendation and the summary of the evidence and testimony must be available for review and duplication at the Lee County Division of Zoning and Development Services, the Lee County Hearing Examiner's Office, and any other County office(s) deemed appropriate by the Hearing Examiner; or
 - (d) mail notice to all participants stating that the recommendation has been rendered and provide a brief summary of the substance of the recommendation as well as notice where anyone may obtain a copy of, or review, the recommendation.

[END OF PROVISIONS]