

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY:

Committees/Boards/Commissions/Examiners

CODE NUMBER:

AC-2-7

TITLE:

Administrative Procedures for the Scheduling and Conduct of Hearings on Land Use Matters Coming Before the Lee County Board of County Commissioners from the Lee County Hearing Examiner

ADOPTED:

3/22/89

AMENDED:

10/30/91 8/5/92 2/17/93 4/21/93
8/31/94

ORIGINATING DEPARTMENT:

Community Development

PURPOSE/SCOPE:

The purpose of this administrative code is to establish procedure for scheduling and conduct of all public hearings on land use matters before the Board of County Commissioners from the Lee County Hearing Examiner. This code supplements the Lee County Land Development Code. If there is any conflict between this code and the Land Development Code, the provisions of the Land Development Code will prevail.

POLICY/PROCEDURE:

BE IT ORDAINED BY THE COUNTY COMMISSION OF LEE COUNTY, FLORIDA:

SECTION 1. SCHEDULING OF CASES :

1.1 Hearing Dates

- A. Hearings on rezonings and related matters will be held on the first Monday of each month, and on Wednesdays at regularly scheduled Commission meetings. This schedule may be varied at the direction of the Board of County Commissioners in order to accommodate emergencies, holidays or other extenuating circumstances.

1.2 Scheduling Responsibility

- A. Upon receipt of the written decision of the Hearing Examiner with recommendations for action by the Board of County Commissioners in rezonings and related matters, the Department of Community Development (DCD) will schedule the case for hearing by the Board and provide the notice required by applicable administrative codes and the Land Development Code.

1.3 Notice

Notice of all hearings will be provided in accordance with other administrative codes adopted specifically for this purpose.

SECTION 2. CONDUCT OF HEARINGS

2.1 Hearings on the Record

- A. All hearings will be conducted and decided based only on the official written record in each case. The Board must conduct its review as an appellate proceeding and not as a trial de novo.
- B. Except for the Board's staff, the applicant or his authorized representative, only a person who is a party of record (or his representative) to the earlier hearing before the Hearing Examiner has the right to address the Board. The Board's staff, the applicant, and the applicant's authorized

representative is not required to file a Request for Appearance.

- C. The content of all statements by persons addressing the Board will be **strictly limited to the correctness of findings of fact or conclusions of law** contained in the record, or to allege the discovery of relevant new evidence **which was** not known by the **speaker** at the time of the earlier **hearing** before the Hearing Examiner and not **otherwise** disclosed in the record. Each such statement will be limited to five (5) minutes or as the **Board** may otherwise allow.
- D. The **Board** may not take testimony from any person or accept into evidence any document **which** as not in the record provided by the **Hearing Examiner**.
- E. The Board may orally question **its staff**, its attorneys, and any party of record who is present; **about matters** contained in the written record, and points of law or procedure.

2.2 Order of Proceedings

To the extent reasonably possible, the order of proceedings **will** be as follows:

- A. County staff's **arguments** concerning points of law or **fact**, where they disagree **with the Hearing Examiner's recommendations** or allege new evidence.
- B. **Applicant's arguments** concerning points of law or fact, where he disagrees **with the Hearing Examiner's recommendations** or alleges new evidence.
- C. Parties of Record's **arguments** concerning points of law or fact, where they disagree with the Hearing Examiner's **recommendations** or allege new evidence:
- D. Request for show of hands by public present, who agree with the recommendations of the Hearing Examiner.
- E. **County staff** rebuttal of arguments of the applicant or parties of-record.
- F. Applicant's rebuttal of arguments of county staff or parties of record.
- G. Questions by the Commissioners.

2.3 Deferrals and Continuances

Deferrals and continuances of a case may be granted by the Board of County Commissioners in accordance with the provisions of Section 34-235 of the Land Development Code.

2.4 Decisions

- A. In rendering its decision on rezonings and related matters, the Board shall consider the criteria set forth in Section 34-145 of the Land Development Code, and the substantive recommendation of the Hearing Examiner.
 - (1) The Board **may**, in conformity with the Zoning Ordinance, reverse, affirm, or modify the recommendation of the Hearing Examiner.
 - (2) No rezoning may be approved other than as advertised in the newspaper, **unless the zoning approved is more restrictive than that which was advertised.**
 - (3) The Board may attach such conditions and requirements to any approval of a request for a **Special Permit, Special Exception, Development of Regional Impact, Planned Development or Variance**, as it deems necessary for **the protection** of health, safety, comfort, convenience or welfare of **the general public**. These conditions or **requirements** must be reasonably **related to the action** requested.