



Guide to
Public Participation

Addressing:
Hearing Examiner Process
BOCC (Zoning & Weekly Meetings)
Local Planning Agency (LPA)

GUIDE TO PUBLIC PARTICIPATION

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GUIDE TO PUBLIC PARTICIPATION

INTRODUCTION

Board of County Commissioners:

The Board of County Commissioners renders the final decision on applications to rezone property. While each Commissioner represents one of five districts throughout the County, they are elected and vote on zoning applications countywide. The Board does not hear testimony and evidence on each application. This task has been delegated to the Hearing Examiner. The Board relies on the Hearing Examiner's report and recommendation and may uphold or overturn the recommendation as appropriate. The Board's decision on applications to rezone property may be appealed to Circuit Court.

Hearing Examiner:

Lee County employs two attorneys that specialize in land use law to serve as Hearing Examiners. It is their responsibility to hear code enforcement cases, appeals from interpretations of the Land Development Code, and applications for variances, special exceptions, and changes in zoning designation. In the case of variances and special exceptions, the Hearing Examiner's decision is final. In the case of requests to rezone property, the Hearing Examiner issues a recommended action to the Board of County Commissioners. This recommendation typically includes findings of fact and conclusions of law. In the instance of planned development zoning, the Hearing Examiner's recommendation will include suggested conditions of approval. The Board may choose to uphold or overturn any portion of the Hearing Examiner's recommended action.

In the zoning context, it is the Hearing Examiner's responsibility to hear testimony and evidence. This evidence and testimony is then summarized in the Hearing Examiner's report and recommendation to the Board of County Commissioners.

Local Planning Agency:

The Local Planning Agency, or LPA, is a panel consisting of seven members of the public appointed by the Board of County Commissioners. The members of this agency have the general responsibility for the Comprehensive Plan Program. The Comprehensive Plan Program includes the preparation of the plan amendments and making final recommendations to the Board regarding the amendments to the Plan. The LPA monitors and oversees the effectiveness and status of the Lee Plan and recommends changes in the Plan from time to time. In addition to the above, the LPA reviews all proposed amendments to the land development regulations and makes recommendations to the Board as to the consistency of those proposed regulations within the Lee Plan. The LPA typically meets monthly, but occasionally meetings are cancelled if no matters are pending for their consideration.

HEARING EXAMINER

Location: 2nd Floor of the Public Works/Department of Community Development Building in the Lee County Hearing Examiner Hearing Room, located to the left of the elevator bank.

Arrangement of Room: Diagram of Room attached as Exhibit A.

The Hearing Examiner is seated at the head of the table. The court reporter is seated immediately to the left. Staff members are seated to her left, against the wall. The applicant and their representatives are to the Hearing Examiner's right. Directly in front of the Hearing Examiner is a podium where much of the testimony is given. The first two rows of seats are reserved for additional staff members. These seats may also be used by members of the public who have difficulty hearing. The remainder of the room is available for the public. If, during the hearing, you must leave for any reason, use the door toward the rear of the hearing room. It will be left unlocked for the duration of the hearing.

Upon arrival, members of the public should fill out a "Public Participation Form." (Attached as Exhibit B.) These forms are located on a table against the wall behind the podium. This form should be completed by all members of the public desiring to speak or receive a copy of the Hearing Examiner's recommendation/decision at the conclusion of the case. Once completed, this form can be left next to the Hearing Examiner's chair or given to the Hearing Examiner at the conclusion of the hearing.

Order of Proceeding:

The order of the proceeding before the Hearing Examiner is as follows:

1. Swearing in of witnesses.
2. Applicant's presentation and cross examination.
3. Staff's presentation and cross examination.
4. Public comment and cross examination.
5. Rebuttals by applicant and staff on substance of their presentations.
6. Hearing is closed.

Swearing in:

First, the Hearing Examiner will swear in everyone who will testify that day. This includes all members of the public who desire to speak.

Applicant's presentation:

The applicant seeking the zoning change will then make a presentation. This presentation may be brief, but often times includes several expert witnesses. Each witness may be cross examined by County staff and by attorneys representing members of the public. If not represented by an attorney, the public's questions of expert witnesses will only be permitted during the public comment portion of the hearing. These questions should be limited to the scope of the expert's testimony. This is not the time for the public to remark on the substance of the application. Accordingly, all editorial remarks should be reserved until later when the public may comment on the application.

Staff's presentation:

After the applicant presents the case in support of the application, Lee County staff will make a presentation based on their staff report. At the conclusion of the staff's presentation, the applicant and any attorney representing the public may cross examine the County staff on their presentation. If the public has questions of a specific staff member, they will be given an opportunity to ask those questions during the public comment portion of the hearing. Again, this is not the time for the public to remark on the substance of the application or the staff report. All editorial remarks should be reserved until the public comment portion of the hearing.

Public Comment:

After the staff's presentation and cross examination, the public may address the Hearing Examiner. The public must approach the podium, identify themselves and give their address prior to speaking. Comment by the public should be limited to the substance of the application under consideration. The Hearing Examiner does not impose a time limitation on the duration of public comment, but may refuse to hear public comments that are redundant, inflammatory, or irrelevant to the request under consideration. Note that members of the public may be subject to cross examination by the Hearing Examiner, the applicant, and County Staff.

The public should utilize this time to explain their position on the application and to suggest conditions of approval, if any. The public comment is most effective when members can identify the specific areas of concern, and then explain the nature of their concerns. It may be helpful for the public desiring to address the Hearing Examiner to prepare a brief outline of their intended comments. This will assist in the presentation of all issues of concern, and will eliminate the need to speak more than one time during public comment to supplement the presentation with forgotten items.

Conclusion:

At the conclusion of the hearing, the Hearing Examiner will prepare a recommendation to the Board of County Commissioners on applications for rezoning. On applications for Variances and Special Exceptions, the Hearing Examiner will render a final decision. This report, when published, will be forwarded to all members of the public who provided the Hearing Examiner with a completed "Public Participation Form" at the hearing.

Additional Notes:

Members of the public speaking for themselves and others in a representative capacity, must state on the record on whose behalf they are speaking. The Hearing Examiner recommendation will be sent only to the person who spoke to the Hearing Examiner in the representative capacity. However, it is important to remember that the Hearing Examiner's recommendation is a public record. Therefore, once published, anyone may request a copy.

Two to four weeks after the Hearing Examiner issues the report/recommendation, for rezoning applications, the matter will be heard by the Board of County Commissioners. Only members of the public who addressed the Hearing Examiner will be permitted to address the Board of County Commissioners. Accordingly, if members of the public desire to address the Board, it is important for them, or their representative, to participate by appearing and speaking in the hearing before the Hearing Examiner. Writing a letter to the Hearing Examiner without also speaking at the public hearing, will not qualify as the level of participation necessary to be able to address the BOCC at the final hearing. Similarly, merely having a neighbor read a written statement into the record on your behalf will not qualify as the level of participation necessary to address the BOCC at the final hearing.

Lee County regulations prohibit ex parte communications with the Hearing Examiner or their staff regarding pending zoning applications. This means it is a violation of County regulations for anyone to initiate contact with the Hearing Examiner outside the public hearing to discuss issues pertaining to pending zoning requests. Members of the public may not attempt to contact the Hearing Examiner or their staff with letters, e-mail, phone calls, or meetings.

Final decisions of the Hearing Examiner on applications for Variances and Special Exceptions are not reviewed by the B.O.C.C. The Hearing Examiner's decisions on Variances and Special Exceptions may only be reviewed in Circuit Court.

**BOARD OF COUNTY COMMISSIONERS HEARINGS
(Zoning Matters)**

Location: 2120 Main Street, Fort Myers, Florida

Arrangement of Room: Diagram of Room attached as Exhibit C

The members of the Board are seated on the dais. The County Attorney is seated to the left of the podium. County staff is seated to the right of the podium. The public may seat themselves anywhere else in the Board Room. It is not necessary to fill out forms or cards to speak during public comment at a zoning hearing before the Board. Only those individuals who spoke at the Hearing Examiner level will be permitted to address the Board when their name is called.

Order of Proceedings - Published Agenda:

The Chairman of the Board of County Commissioners will call each item on the agenda separately. A staff person will introduce the case. The applicant's representative will make a brief presentation. Then the Chairman will call all members of the public who participated in the proceeding before the Hearing Examiner. The Board may have questions of County staff or the applicant's representatives at this time. The Board will then vote on the matter and move on to the next item on the agenda.

Public Comment:

Members of the public desiring to address the Board of County Commissioners should approach the podium and state their name and address for the record. **Public comment is limited to five minutes for each speaker.** The Land Development Code restricts the scope of the public's comment at Board Zoning hearings to the following matters:

1. Correctness of the finding of fact or conclusions of law contained in the record; or
2. Alleged discovery of new evidence that could not have been provided by the speaker at the time of the hearing before the Hearing Examiner and that is not otherwise disclosed in the record.

Generally, no new evidence may be presented at the Board of County Commissioner hearing. Therefore, it is not appropriate to present petitions, photographs, or news articles at this time. Public comment should be strictly limited to items 1 and 2, and specific questions.

Newly discovered evidence that would create a valid basis for a remand of the case must satisfy the following criteria:

1. The evidence has been discovered since the Hearing Examiner hearing;
2. The evidence could not have been discovered before the Hearing Examiner hearing by the exercise of due diligence;
3. The evidence is material to the issue;
4. The evidence is not merely cumulative or impeaching; and
5. The evidence will probably change the result.

At the conclusion of the public comment, the Board will close input and discuss the item. If new evidence has been alleged by the participant, the Board will decide if the nature of the evidence warrants a remand of the case back to the Hearing Examiner for further review. No additional public comment will be permitted. The members of the public will not be able to address the Board of County Commissioners more than once.

Ex parte (one-sided) communications with the Hearing Examiner or members of the Board of County Commissioners are prohibited in the context of the zoning hearing. Members of the public should not attempt to contact the Hearing Examiner or members of the Board with letters, e-mail, phone calls or meetings.

LOCAL PLANNING AGENCY (LPA) MEETINGS

Location: 2120 Main Street, Fort Myers, Florida

Arrangement of Room: Diagram of Room attached as Exhibit C

Order of Proceedings - Published Agenda

Members of the public will have two opportunities to comment during a typical agenda of a LPA meeting. First, there is a time early in the agenda that provides for general public comment on matters not on the agenda. Public comment is also permitted on specific agenda items when those items are raised by the LPA. The setup of the room for an LPA meeting is identical to a Board of County Commissioners' hearing. When members of the public desire to address members of the LPA, they must walk up to the podium and identify their name and address prior to speaking. Members of the public may ask questions or offer comments verbally or through written handouts. There is no limitation on the duration of time that members of the public may speak. At the conclusion of the public input portion of the agenda, no further input is appropriate.

There is no limitation on ex parte or one-sided communications with members of the LPA. However, members of the LPA Board may disclose on the record that they have been contacted by members of the public.

BOARD OF COUNTY COMMISSIONERS WEEKLY MEETING

There are several opportunities for public comment during a weekly meeting. At 9:30 a.m., the weekly agenda allows for public discussion on items that have been placed on the consent and administrative agenda. The comments of the members of the public desiring to address the Commission must be limited to items that are on the consent and administrative agenda.

On the second and fourth Tuesday of every month, at 5:05 p.m., members of the public may address the Board of County Commissioners on any item regardless of whether it is on the agenda that day, excluding appeals of decisions of the Hearing Examiner or similar matters where the privilege of addressing the Board is controlled by ordinance or other administrative codes.¹ These discussions may occur during the “Public Presentation of Matters by Citizens” section of the agenda. No further public input is appropriate thereafter even when the item is brought up for discussion by the Board.

The third opportunity for the public to address the Commission is during any item placed on the “public hearing” agenda of the meeting. These typically include ordinances, development agreements, petitions to vacate, and certain resolutions.

In every instance, the public should complete a blue card entitled “Request to Address the Board of County Commissioners” located on the table outside Board Chambers. (Attached as Exhibit D.) The item on which the member of the public desires to speak should be specified on the blue “Request to Address the Board of County Commissioners” card. Once the blue card has been completed, it should be delivered to the County Manager who is seated at a table to the right of the center aisle directly in front of the Dais where the Commissioners sit.² The County Manager will deliver all blue cards to the Chairman. Each person addressing the Commission must stand at the podium and give their name and address for the record. All remarks should be addressed to the Commission as a body and not to any specific member. **Public comment is limited to three minutes per speaker.** There is generally no ex parte or one-sided limitation on contact with the members of the Board on items that are placed on the weekly agenda. There is also no prohibition on the submission of petitions, photographs, or other written information. Copies of items given to the Commissioners should also be given to the “minutes” person seated directly to the left of the podium for inclusion in the record.

¹ In the rare instance when no items have been scheduled on the Public Hearing Agenda, the “Public Presentation of Matters by Citizens” will occur at the conclusion of the Board’s agenda for that day.

² Members of the public who do not intend to address the Commission, but desire to indicate support or opposition against an agenda item, may complete a “Request to Address the Board of County Commissioners” card, checking the appropriate box in support or opposition. When the Commission calls their name, they may decline to speak. The name and whether the person was “for” or “against” the item will be read into the record.

It is not appropriate to address the Board on pending zoning matters during the weekly meeting. It is also not appropriate to address the Board on previously heard zoning matters unless it is beyond the 30-day appeal period following the Board's decision.

EXHIBIT A
Hearing Examiner's Chambers

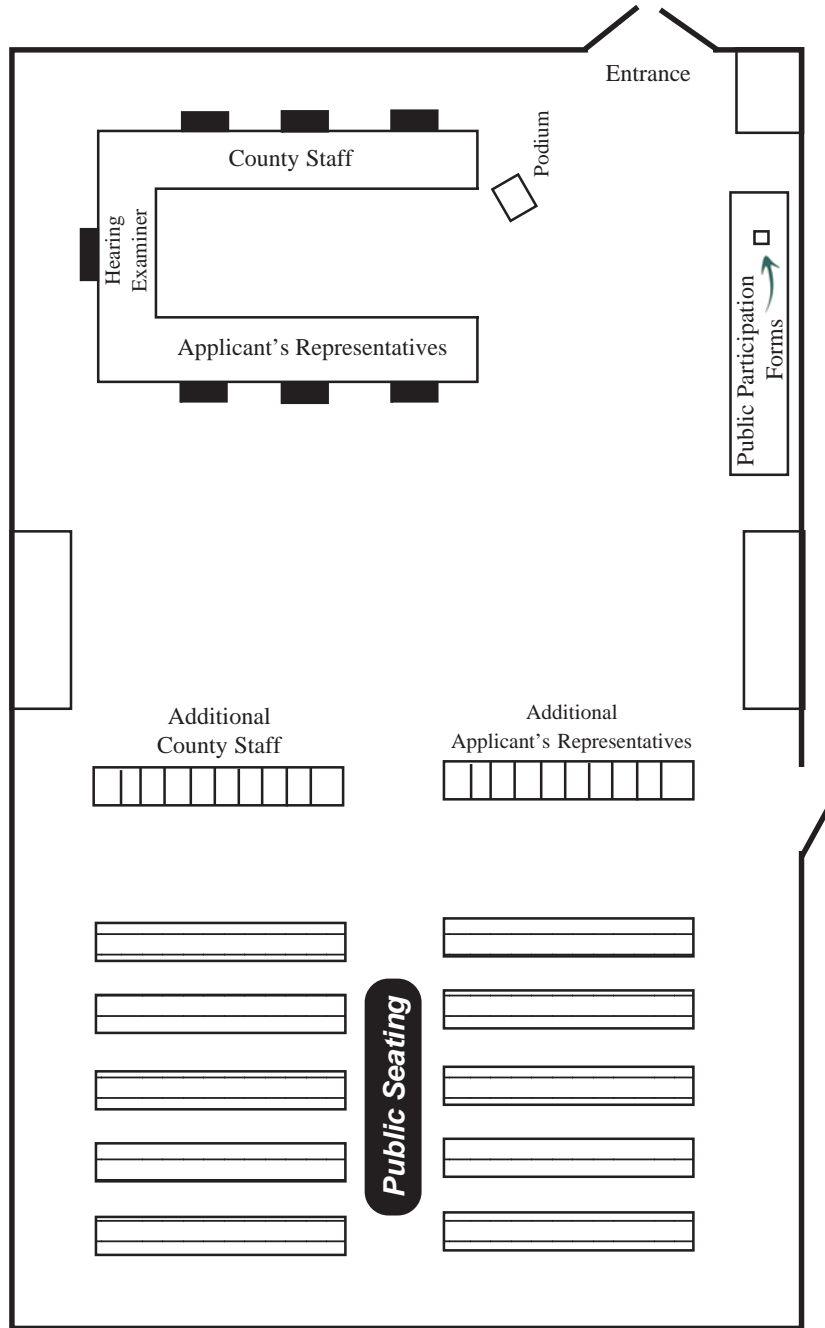


EXHIBIT B

THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER
PUBLIC PARTICIPATION FORM

(Please Print Legibly)

* * * * *

*CASE NAME: _____

* * * * *

*CASE #: _____ HEARING DATE/TIME: _____

* * * * *

* * * * *

*NAME(S): _____ PHONE #: _____

* * * * *

*MAILING ADDRESS: _____

* * * * *

* * * * *

(city) *(state)* *(zip code)*

* * * * *

* FOR AGAINST GENERAL INTEREST * * * * *

* * * * *

* APPLICANT'S REPRESENTATIVE * * * * *

* * * * *

* I WISH TO SPEAK AT THIS PUBLIC HEARING, AND TO RECEIVE * * * * *

* COPY OF HEARING EXAMINER RECOMMENDATION/DECISION * * * * *

* * * * *

* I WISH TO RECEIVE COPY OF RECOMMENDATION/DECISION * * * * *

* * * * *

* * * * *

IMPORTANT NOTICE

REGARDING APPEARANCE BEFORE THE BOARD OF COUNTY COMMISSIONERS IN REZONING CASES

ALL PERSONS WISHING TO PRESERVE THE RIGHT TO ADDRESS THE BOARD OF COUNTY COMMISSIONERS CONCERNING A ZONING MATTER [a Conventional Rezoning, a Development of County Impact (DCI), or a Development of Regional Impact (DRI) case] MUST PROVIDE EITHER TESTIMONY OR EVIDENCE, ON THE RECORD, AT THE HEARING EXAMINER PROCEEDING.

LETTERS AND COMMENT CARDS ARE NOT CONSIDERED EVIDENCE. THEY WILL, HOWEVER, BE ACCEPTED FOR PURPOSES OF PROVIDING YOU A COPY OF A HEARING EXAMINER RECOMMENDATION.

THESE CHANGES ARE IN RESPONSE TO COURT DECISIONS WHICH RELATE TO THE QUASI-JUDICIAL NATURE OF ZONING CASES. IF YOU NEED FURTHER CLARIFICATION OF THIS PROCEDURAL CHANGE, PLEASE ASK THE ASSISTANT COUNTY ATTORNEY ATTENDING THE PUBLIC HEARING, OR CALL 239/335-2236.

/Y/ /N/

EXHIBIT C
LPA and BOCC Chambers

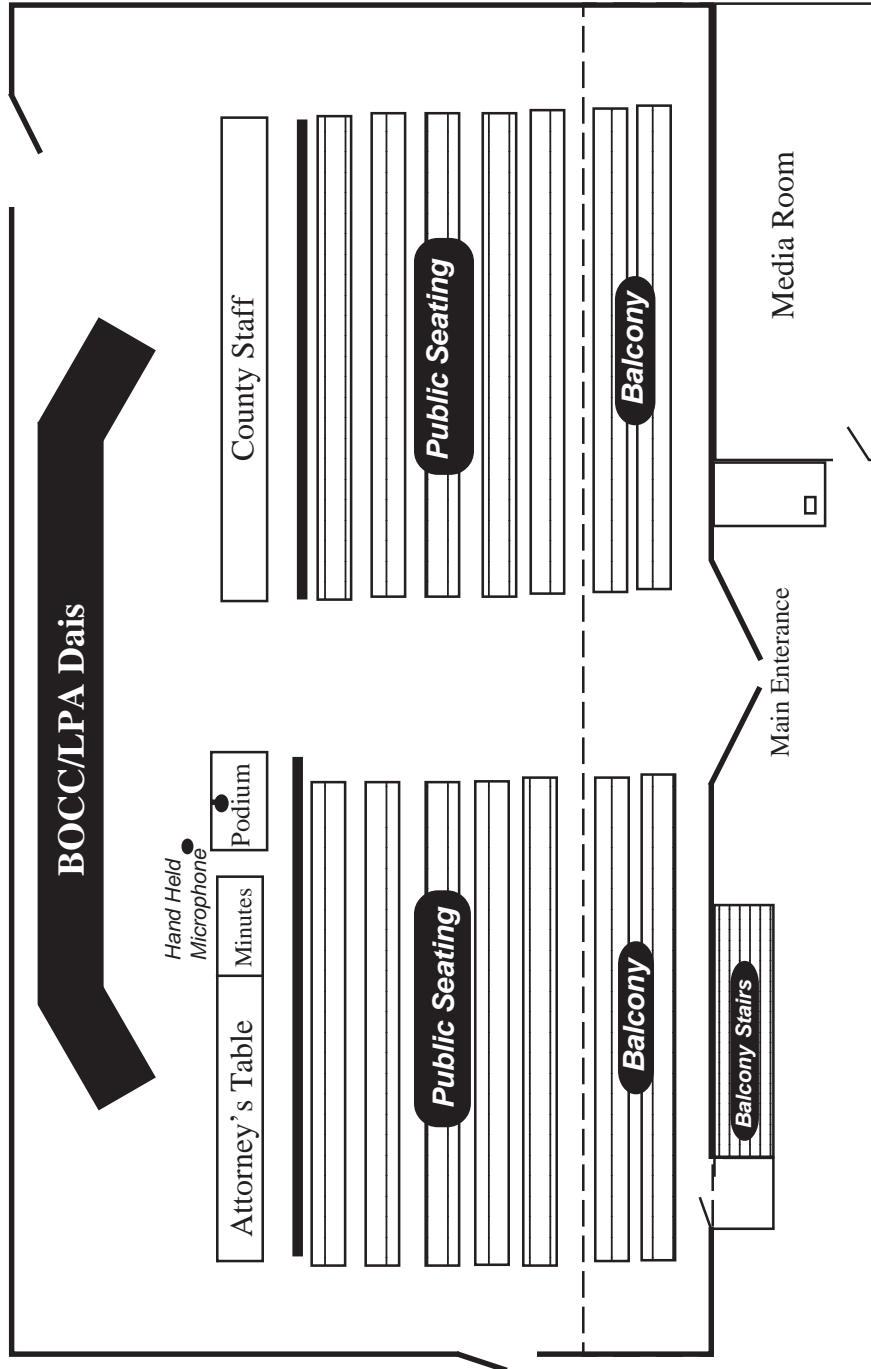


EXHIBIT D



LEE COUNTY
SOUTHWEST FLORIDA

Request to Address

the Board of County
Commissioners

Please Print Information Clearly

Name _____

Address _____

City _____ State _____ Zip _____

Agenda Item _____

Date _____ For Against Other

For Agenda Information Contact Public Resources at 335-2215
or visit our web site at Lee-county.com

Notes

Notes

