

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

<b>CATEGORY:</b> Committees/Boards/Commissions/Examiners	<b>CODE NUMBER:</b> AC-2-7
<b>TITLE:</b> 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	<b>ADOPTED:</b> 3/22/89
	<b>AMENDED:</b> 10/30/91, 8/5/92, 2/17/93, 4/21/93, 8/31/94, 8/2/2022, 6/20/2023
	<b>ORIGINATING DEPARTMENT:</b> 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

Hearings on rezonings and related matters will be held on the first and third Wednesdays of each month. This schedule may be varied at the direction of the Board of County Commissioners (the "Board") in order to accommodate emergencies, holidays or other extenuating circumstances.

1.2 Scheduling Responsibility

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 record of evidence and testimony 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 Hearing Examiner, and the applicant, or applicant's authorized representative, only a person who is a party of record (or a party's representative) to the earlier hearing before the Hearing Examiner has the right to address the Board.
- 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 official 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 three (3) 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 is not in the record provided by the Hearing Examiner. Any document that is presented to the Board during a Zoning Hearing must have been submitted as part of the record and accepted as an Exhibit (provided an Exhibit number by the Hearing Examiner) in the hearing before the Hearing Examiner. However, a document that is relevant new evidence that was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner may be presented to the Board. The individual presenting the document must provide a copy for each Board member and the Clerk, along with one copy for the Applicant and County Staff.

As a courtesy and to ensure compliance with these regulations, copies of documents not submitted as part of the record before the Hearing Examiner should be provided to the Applicant and County Staff prior to the beginning of the Hearing.

- E. The Board may orally question its staff, its attorneys, the Hearing Examiner, and any party of record who is present, about matters contained in the official 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 presentation of arguments concerning points of law or fact.
- B. Questions of staff by the Commissioners.
- C. Applicant's arguments concerning points of law or fact, including points of disagreement with the Hearing Examiner's recommendation.
- D. Questions of the Applicant by the Commissioners.
- E. Parties of Record arguments concerning points of law or fact, including points of disagreement with the Hearing Examiner's recommendation.

F. County staff rebuttal of arguments of the applicant or parties of record.

G. Applicant's rebuttal of arguments of county staff or parties of record.

### 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 34-232 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 Land Development Code, reverse, affirm, or modify the recommendation of the Hearing Examiner.
- (2) No rezoning may be approved other than as advertised, unless the zoning approved is more restrictive than that which was advertised.
- (3) The Board may attach conditions and requirements as appropriate to an approval 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.