



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE  
BOARD CHAMBERS  
2120 MAIN STREET, FORT MYERS**

**WEDNESDAY, APRIL 13, 2022  
2:00 P.M.**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – March 9, 2022
3. LDC Amendments – Hearing Examiner (HEX) Amendments:
  - 1) Code Enforcement Update (LDC Chapter 2)
  - 2) HEX Decisions for Conventional Rezoning (Chapter 34)
  - 3) HEX Decisions for PD/PUD Amendments (Chapter 34)
  - 4) Changes to HEX Recommendations (Chapter 34)
  - 5) HEX review of DRIs (Chapter 34)
  - 6) Administrative Appeals to HEX (Chapters 2, 10, 12, 14, 22, 26, 33 & 34)
  - 7) HEX Participation at BoCC Hearings on Zoning Matters (Chapter 34)
  - 8) Clarification of Language Prohibiting Unauthorized Communications (Chapter 2)
  - 9) Clarification of Administrative Interpretations (Chapter 2)
4. Adjournment  
Next Meeting date: May 11, 2022

To view a copy of the agenda, go to [www.leegov.com/dcd/calendar](http://www.leegov.com/dcd/calendar).

For more information, contact Debbie Carpenter, (239) 533-8345 or [DCarpenter@leegov.com](mailto:DCarpenter@leegov.com).

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**MINUTES REPORT  
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE  
(EROC)**

**Wednesday, March 9, 2022  
2:00 p.m.**

**Committee Members Present:**

Randal Mercer, Chairman  
Tracy Hayden, Vice Chair  
Mike Roeder  
Bob Knight  
Mike Reitmann

Jim Ink  
Ian Moore  
Bill deDeugd  
Matthew Roepstorff

**Excused / Absent:**

Victor DuPont  
Sam Hagan  
Tim Keene

Carl Barraco Jr.  
Bill Ennen  
Buck Ward

**Lee County Government Staff Present:**

David Loveland, Director, Community Development  
Anthony Rodriguez, Zoning Manager  
Adam Mendez, Zoning  
Dirk Danley, Jr., Zoning  
Jessica Sulzer, Development Services Manager  
Joe Adams, Assistant County Attorney  
Deborah Carpenter, DCD Admin, Recorder

**Outside Consultants/Members of the Public Present:**

George Cingle  
Duane Truitt, L26 Development LLC  
Alexis Crespo, RVI Planning

**CALL TO ORDER AND AFFIDAVIT:**

The meeting was held in the Admin East Building, 2201 Second Street, Fort Myers, Florida. Mr. Randal Mercer, Chair called the meeting to order at 2:00 p.m.

Mr. Joe Adams, Assistant County Attorney confirmed the Affidavit of Publication was legally sufficient as to form and content and the meeting could proceed.

**APPROVAL OF MINUTES – January 12, 2022**

**Ms. Tracy Hayden made a motion to approve the January 12, 2022 minutes as written. Mr. Bob Knight seconded. The motion was called and carried unanimously.**

**LDC AMENDMENTS**

Mr. Mercer expressed his gratitude to staff for the inclusion of the summaries, staff comments and the comments from other committees in the proposed amendments. He found all very helpful.

## **NOISE ORDINANCE AMENDMENTS**

Mr. Adam Mendez introduced the item and summarized the proposed amendment of Ordinance 14-18 as codified in Chapter 24½ Lee County Code of Ordinances. He reviewed the history of the noise ordinance which originated in 1982. The main focus of the proposed amendments establish maximum C-Weighted noise levels (dBC levels), correct the definition of “Pure Tone”, establish an alternate method of measuring decibel levels and provides the Sheriff’s office the ability to appoint a designee to conduct investigations. The Local Planning Agency (LPA) heard the proposed amendment on February 28<sup>th</sup> and provided recommendations to revise the sound measurements standards A(4) to reflect that ability to measure in accordance with proposed Table 2 and also supported renaming Table 2 from Alternate Sound Levels to Alternate Sounds Levels by Emitting Land Use for clarification purposes. The Sheriff’s office has been consulted and staff believes they have the equipment to carry out the C-weighted and Pure Tone readings. The LPA voted to find the proposed amendment consistent with the Lee Plan.

Mr. Bill deDeugd asked about cars and loud bass and Mr. Mendez confirmed that the proposed amendment was meant to capture those types of frequencies.

Mr. Knight asked whether other jurisdictions – Fort Myers Beach or Cape Coral as examples, had noise ordinances to this level. Mr. Mendez said that the County’s and Fort Myers Beach noise ordinances were the same, except that Fort Myers Beach does not have industrial/manufacturing that the County has but otherwise it is the same. The goal is regulatory consistency between jurisdictions.

Mr. George Cingle spoke in favor of the ordinance but against the inclusion of the county’s Table 2 which excludes “manufacturing or industrial from source property line standards”. He spoke of a manufacturing plant emitting loud noises and currently affecting 4 communities that has not been cited due to exemptions and exclusions as well as confusion on the part of Sheriff personnel. In his opinion the Table 2 exemption being considered for Manufacturing and Industrial noise sources must be removed so that the Table 2 criteria can be consistently enforced to provide equal protection under the law. He suggested that staff implement a noise ordinance amendment that is consistent with new residential growth policies that is easily enforceable, and fair and equitable to all without exemptions or exceptions. (a copy of his written comments is attached).

Mr. Mendez clarified that Table 2 as proposed is alternatively utilized at the discretion of the Sheriff’s office. Table 1 remains the primary table applicable and that table proposes C-Weighted maximum sound levels which will be applicable to all land uses, including manufacturing and industrial.

Mike Roeder questioned Mr. Cingle on the location of the manufacturing plant that was emitting the noise affecting his community and others. Mr. Cingle provided additional information (audio was inaudible) and discussion followed.

Mr. Mercer questioned the remedy if the Sheriff’s office failed to enforce the ordinance. Mr. Mendez replied that some kind of litigation to a higher court may be necessary in that case. Mr. Roepstorff stated that a homeowner always has the option of filing a civil action for a nuisance complaint regardless of county action.

**Mr. Matt Roepstorff made a motion to approve the Noise Ordinance. Seconded by Ms.**

**Hayden. Hearing no further discussion, Mr. Mercer called the motion and it passed unanimously.**

## **LDC Amendments**

### DESIGN STANDARDS FOR SINGLE AND TWO-FAMILY DWELLING UNITS

Mr. Anthony Rodriguez, Zoning Manager, introduced this item stating that the proposed amendment was intended to bring the Land Development Code into compliance with recent legislative pre-emptions regulating building design elements for single and two family dwelling units. The legislative action pre-empts local governments from regulating design elements with certain exceptions as outlined in the cover memorandum. The statutory amendments do not pre-empt local governments from enforcing or implementing zoning regulations, setbacks, building heights or lot coverage.

He stated the LDCAC and LPA had reviewed the amendments. The LPA pointed out two design illustrations that needed to be struck because they spoke to design elements, in particular within Page Park. Staff made the modification, removing the 2 figures and that will be presented to the Commissioners. LPA also questioned why the landscape standards for duplex and two family dwelling units were being deleted. Staff said these regulations have never been enforced and in order to do so, the County would have to hire additional staff with the required expertise to evaluate landscape plantings in compliance with this particular code section. Staff was recommending that this section be struck because it is not enforced.

**Motion to approve by Mr. Roepstorff. Second by Ms. Hayden. Hearing no comments, Mr. Mercer called the question. The motion passed unanimously.**

### CASITAS WITHIN RECREATIONAL VEHICLE PLANNED DEVELOPMENTS (RVPDs)

Mr Rodriguez said casitas are essentially accessory buildings used as an extension of living area for occupants of a recreational vehicle on an RV lot. A zoning case was heard in 2020 and based on that, the Board directed staff to develop regulations to address the addition of casitas within the LDC as a permitted accessory use for certain recreational vehicle planned developments. Certain newer RVPDs have cabanas or coach cabanas as uses but these accessory structures do not allow kitchens or sleeping accommodations. Casitas include the ability to have a kitchen and bedroom. The proposed amendments establish locations for casitas as well as development regulations. In addition, they establish use and occupancy restrictions to avoid density related impacts associated with this type of dwelling unit. Also provided is a process by which an approved RVPD with cabana or coach cabana as a permitted use can essentially exchange that use for a casita through the amendment process rather than a public hearing process.

The LDCAC and LPA both had significant discussion about what the casitas should be, how big they should be and what the process should be for approval. The LDCAC recommended approval of the amendments but increased the 600 maximum size to 900 square feet. Both committees raised the question about the difference between transient and non-transient RV Parks. Mr. Rodriguez said the different is how long an RV can be placed on a lot. The LPA acknowledged that there is a need to establish a maximum living area and found that 900 SF was adequate for the use. The LDCAC asked if there is a definition of living area in the LDC. Staff originally thought that living area was captured by Florida Building Code, but upon further review it was not, so for that reason staff recommended incorporating a definition of living area in the LDC. THE LPA reviewed the definition and recommended that the use be further defined

as living space under air or climate controlled living space.

The LPA found the proposed amendments consistent with the Comp Plan, with the recommendation of modifying the definition of living area. That addition has been incorporated into the proposed amendments.

Ms. Alexis Crespo, RVI Planning, spoke on behalf of the developer of Laguna Caribe, an RVPD in Cypress Woods off Luckett Road. She had worked with staff on the language and thanked them for their effort. As a result of LDCAC comments, staff had increased the 600 square footage to 900 square feet, and although she would have preferred to let maximum lot coverage and setbacks of a lot govern how big these casitas can be, she understood staff wanted to limit the size. She thought the 900 square feet coupled with the definition of living area would be workable for the majority of buyers in the project. She asked staff to consider changing the language on Page 2 with respect to separation between the casita and the RV pad. They agreed casitas should be 10 feet from the neighboring lots but would like to have the language amended to clarify the casita separation is from the RV Pad and casitas on other lots.

Mr. Duane Truitt, the developer of Laguna Caribe spoke in support of the amendment as written with changes. He asked staff to clarify that only a single side setback would apply. He proposed not having a limit of square footage in the code. He spoke extensively about casitas in other parts of the country and Florida and that high end resorts have gone to much larger units. He said other jurisdictions rely solely on the PD process which allows site specific as well as market specific factors to be considered.

Mr. Mercer asked staff if there was a process for a cabana to be converted or retrofitted as a casita. Mr. Rodriguez said there is a process - a developer that has a PD with a cabana as a permitted use could come in for an administrative amendment to change out cabana to casita.

Mr. Knight was in favor of letting the site drive the size of the casitas. Mr Rodriguez said a concern was that at some point the accessory building ceases to be accessory and becomes a single family dwelling. Accessory Structures are defined as being subordinate and temporary to a principal use and the size is generally governed by the size of the living area of the principal structure. Another concern is that older RV parks that are not completely built out, can reduce the number of lots and add the casita use without considering the impacts to established RV lot owners elsewhere in the same Planned Development which becomes a compatibility issue.

Mr. Ink asked if a deviation from the 900 SF was possible. Mr. Rodriguez said yes, through a Public Hearing process.

Ms. Hayden asked Ms. Crespo for a clarification of her comments concerning the separations. Ms. Crespo said they were fine with the separation between casitas on different lots and her suggestion would be to add to the sentence "from the parking pad for recreational vehicles on other lots". Staff said that change would be incorporated.

**Mr. Knight made a motion to add language to e(2)c: on other lots; and Strike / Delete e(2)a. Mr. Ian Moore seconded.**

Mr. Roepstorff made the comment that he didn't see the difference between casita and a single family home.

**Mr. Mercer called the question. By a show of hands, there were 4 opposed to the motion; there were 5, including the Chairman, in favor. The motion passed 5 to 4.**

#### HYBRID WAREHOUSES

Mr. Mendez introduced the proposed amendments, saying that Hybrid Warehouse Use is the term used to define man caves, she sheds and RV condos, all of which have become popular. In addition to dead storage depository that characterize mini-warehouse development, individual units may be outfitted with interior improvements which create occupiable space for personal hobbies and recreation. As proposed, the use will be permitted by right or special exception in conventional zoning districts which currently permit mini-warehouse development in the same fashion, including the North Fort Myers commercial corridor where this use has been permitted through the special exception process. This use has been recognized in the Planned Development zoning process and these approvals were attached as examples to the agenda packet. The LDCAC and LPA approved the proposed amendments.

Mr. deDeugh asked about enforcement of violations and Mr. Mendez responded that enforcing what is behind closed doors is difficult, but he was not aware of any previous complaints.

Mr. Roeder asked about prohibited activities and Mr. Rodriguez responded that manufacturing on a commercial scale is prohibited, but woodworking as a hobby would be allowed. Mr. Roeder also asked about the differentiation between mini-warehouse and public warehouse. Mr. Rodriguez explained that a Mini-warehouse would be a classic storage facility where a person would drive up, open an overhead door and store their stuff. A public warehouse is defined as a facility that is accessible by an interior corridor and is climate controlled.

**Ms. Hayden made the motion to approve as written. Seconded by Mr. Moore. The motion pass unanimously.**

Mr. David Loveland, Community Development Director addressed the committee saying that these amendments would be going to the Board for public hearings in April and May. There are a number of Hearing Examiner-related provisions that will be brought to EROC's April meeting. Staff is still working on dock and shoreline industry changes. He said there are a number of other amendments that staff is working on as well.

There was no other business. **Mr. Mercer adjourned the meeting at approximately 3:40 p.m.**

The next meeting was tentatively scheduled for April 13, 2022.

Good afternoon!

I would like to first thank the Lee County Staff for their hard work on this amendment.

I have the following comments:

The Staff Note for **Section 24 ¼-3. Definitions**, states that incorporating C-weighted standards will result in “an outcome of regulatory consistency between neighboring jurisdictions, enforced by the same entity,” and I completely agree. However, in **Section 24 ¼-5. Prohibited acts**, Staff recommends that manufacturing and industry be exempt from Table 2, which contradicts their previous statement. I believe that regulatory consistency and equal protection under the law is key, which is why Fort Myers Beach, the City of Fort Myers, Cape Coral, and even Collier County **do not** preferentially treat manufacturing and industry noise sources. A manufacturing plant located in a Lee County industrial park should not be protected from prosecution if its noise output violates Table 2 Standards. Residents in four Lee County communities have experienced this first-hand: a plant emits loud noises every ten seconds that can be plainly heard from miles away, yet is not cited due to “exemptions” and “exclusions,” but more importantly, that cause confusion for Sheriff’s Office personnel. In my opinion, the Table 2 exemption for manufacturing and industrial noise sources must be removed so that the Table 2 criteria can be consistently enforced and provide equal protection under the law.

In conclusion, as the number of residential communities grow rapidly in unincorporated Lee County, it is a foregone conclusion that noise complaints will also increase at the same rate. I believe that noise pollution in this decade will become as big a problem as air and water pollution was in the 1970’s, especially as the distance between residences and businesses is reduced by the County’s progressive land development. It is now time for Lee County to address this fact, and implement a noise ordinance amendment that is: consistent with new residential growth policies, easily enforceable, and fair and equitable to all.

Thank you for your time and consideration.

**MEMORANDUM**  
**FROM**  
**THE DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

**TO:** Executive Regulatory  
Oversight Committee (EROC)

**DATE:** March 31, 2022

**FROM:** Anthony R. Rodriguez, AICP  
Zoning Manager

**RE: Land Development Code Amendments  
Matters Concerning Hearing Examiner (HEX)**

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The attached Land Development Code amendments, scheduled for consideration at the April 13, 2022 meeting, have been prepared to update and modify various functions of the Hearing Examiner (HEX). Staff seeks input and a recommendation as to whether the proposed amendments should be adopted by the Board of County Commissioners (BoCC).

Background

In the spring of 2021, DCD staff, in conjunction with County Attorney's Office and the Hearing Examiners, began discussing a series of amendments to the Land Development Code regarding Hearing Examiner functions related to code enforcement and zoning matters. These amendments were refined over the subsequent months, and were presented to the BoCC at a work session in December of 2021. The BoCC subsequently directed staff to usher the attached amendments through the advisory committee review process on January 18, 2022.

Summary of Amendments

The proposed amendments to the Land Development Code are generally intended to clarify the powers, duties, and responsibilities of the Hearing Examiner, streamline code enforcement and zoning processes where appropriate, and assure compliance with state statute. The proposed amendments have been organized by topic area, which are generally described as follows:

- Update to code enforcement procedures;
- Delegation of decision-making authority for conventional rezoning requests;
- Delegation of decision-making authority for certain amendments to planned developments (PDs) and planned unit developments (PUDs);
- Changes to HEX recommendations on zoning matters;
- Amendments to HEX functions and authority for Developments of Regional Impact (DRIs);



- Administrative appeals to the Hearing Examiner;
- Participation by the Hearing Examiner at BoCC hearings on zoning matters;
- Clarification of language prohibiting unauthorized communications; and
- Clarification of language pertaining to administrative interpretations

The amendments associated with each topic area are preceded by a summary identifying the rationale for the proposed amendments and the expected outcome if the proposed amendments are adopted.

#### Committee Review

The LDCAC reviewed the proposed amendments on March 11, 2022, and the LPA considered the proposed amendments on March 28, 2022. Questions, comments, and the final vote for each of these committees is annotated within the proposed amendments for each topic area.

Attachment – Draft LDC Amendments

## EROC ORDINANCE EVALUATION GUIDELINES

### Proposed Ordinance: Matters Concerning Hearing Examiner (HEX)

1. **What is the public interest that the Ordinance is designed to protect?**  
The proposed amendments to the Land Development Code (LDC) are intended to clarify the powers, duties, and responsibilities of the office of the Hearing Examiner (HEX), streamline code enforcement and zoning processes where appropriate, and assure compliance with state statute.
2. **Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?**  
The legislation in question already exists, and is being refined to streamline and clarify the LDC as appropriate.
3. **Is the regulation required by State or Federal law? If so, to what extent does the County have the authority to solve the problem in a different manner?**  
In part. Amendments pertaining to the DRI process are proposed to assure compliance with state statute.
4. **Does the regulation duplicate State or Federal programs? If so, why?**  
No.
5. **Does the regulation contain market-based incentives? If not, could that be used effectively?**  
No. Market-based incentives are not relevant to the proposed LDC amendments.
6. **Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?**  
Yes. The proposed amendments are intended to protect the public interest while streamlining, clarifying, and updating the LDC to be compliant with state statute.
7. **Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?**  
No.
8. **Does the regulation impact vested rights?**  
No.
9. **Does the regulation provide prompt and efficient relief mechanisms for**

**exceptional cases?**

Yes. There are existing provisions in the LDC to provide relief for exceptional cases.

**10. Even though there is an interest to be protected, is it really worth another regulation?**

No new regulations are proposed by these amendments. Rather, these amendments are proposed to refine existing regulations in a manner that protects the public interest while clarifying and streamlining existing provisions as necessary.

**11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?**

It is not known if this approach has been tried in other jurisdictions.

**12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?**

Generally, costs will remain unaffected, or will be reduced, if the proposed amendments are enacted.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 1: Update to Code Enforcement Procedures**

AMENDMENT SUMMARY

*Substantive amendment affecting sections 2-2, 2-425, 2-427 and Administrative Code 2-14*

- Issue: Existing regulations permit the county and violator to enter into a “compliance agreement” only if done prior to the scheduling of a hearing. If an agreement is sought subsequent to the scheduling of a hearing, the parties must enter into an “agreed order” which must be presented to the HEX at a hearing, and which ultimately results in an order issued by the HEX.
- Solution: Combine the “compliance agreement” procedure with the “agreed order” procedure. This would permit the parties to enter into a “code enforcement agreement” at any point, regardless of whether the case has been set for hearing or not, with adjudication of the case only being necessary when the terms of the agreement are breached.
- Outcome: Streamlines Code Enforcement process to result in fewer participants at code enforcement hearings, increases the efficiency of the County’s code enforcement process, and reduces unnecessary administrative time and costs for cases that are abated through compliance with the terms of the agreement.

**CHAPTER 2 – ADMINISTRATION**

**ARTICLE I. – IN GENERAL**

**Sec. 2-2. ~~– Compliance agreements~~ Code Enforcement Agreements.**

Staff note: Replace “compliance agreement” with “Code Enforcement Agreement.” Streamline enforcement and violation process to allow the execution of a Code Enforcement Agreement at any time prior to a Finding of Violation, which will avoid the need for hearing unless the terms of this agreement are breached. Clarify the contents of Code Enforcement Agreements and enforcement procedures.

Committee comments: The LDCAC questioned why the satisfaction/release from a code enforcement agreement will be recorded at the violator’s expense in subsection (b). Staff clarified that recording such a release will benefit the violator and is in the violator’s interest.

- (a) *Authority.* The County Manager or his designee has the authority to enter into ~~compliance~~ Code Enforcement agreements to facilitate compliance with the terms and conditions of the Land Development Code. ~~Compliance~~ Code Enforcement

agreements may be executed at the discretion of the County Manager or his designee. However, the County Manager is under no obligation to enter in a compliance Code Enforcement agreement.

- (b) *Purpose.* The purpose of the compliance Code Enforcement agreement is to provide an alternative and efficient means to reach compliance with the terms of this Code in the event a violation is discovered.
- (c) *Procedure.* Compliance Code Enforcement agreements may only be entered into at any time prior to the ~~violator's receipt of a notice of hearing for code enforcement action before the Lee County Hearing Examiner entering an Order Finding Violation.~~ The agreement must be in writing and executed in recordable form, after review and approval by the County Attorney's office. At a minimum, the agreement must specifically set forth the terms and obligations necessary to abate the violation. The agreement must also provide a specific abatement time frame and the fine to be imposed if the violation has not been abated in accordance with the Agreement. The County may, at its option, record the compliance Code Enforcement agreement in the public records. If a copy of the agreement is recorded, the County, at the violator's expense, will record a satisfaction or release of the agreement once the violation is deemed abated.
- (d) The parties violator must comply with all terms of the agreement, in the stated time frame, before the violation will be deemed abated. In the event the parties violator fails to comply with the terms of the agreement, the County may pursue imposition of the agreed upon fine amount or other code enforcement action. ~~If the County pursues code enforcement action subsequent to the execution of the compliance agreement, the terms of the agreement will have no further effect on the parties and will not be binding on the Hearing Examiner.~~
- (d)(e) *Enforcement.* If the violation has not been abated in accordance with the terms of the Agreement, the County may elect to enforce the terms and conditions of the agreement in a court of competent jurisdiction by injunction or an action for specific performance; or, the County may present the case to the Hearing Examiner for the sole purpose of determining that the agreed upon abatement has not occurred in accordance with the Agreement and entry of an Order Imposing a Fine at the agreed upon fine amount pursuant to the Agreement; or, any combination of the above methods. Unless otherwise agreed upon by the Director, the Hearing Examiner shall not impose a fine different than the one agreed upon within the Agreement, change the required date of abatement, or change the required method of abatement for the violation. The terms and conditions of a compliance agreement may be enforced in a court of competent jurisdiction by injunction or an action for specific performance. In the event the parties execute, but do not perform all obligations under an agreement, the County may pursue Code Enforcement Hearing Examiner action in accordance with Article VII. The Hearing Examiner is not responsible for the enforcement of compliance agreement obligations.

## ARTICLE VII. – HEARING EXAMINER

### Sec. 2-425. - Conduct of hearing.

Staff note: Provide cross-reference to administrative code for conduct of hearings and remove procedural language. Allow for entering into Code Enforcement Agreement without the need for hearing. Strengthen language regarding prosecution of cases.

- (a) Code Enforcement Hearings will be conducted in accordance with Administrative Code 2-14.
- ~~(a)~~(b) *Scheduling of hearings.* A regular time and place will be designated by the Hearing Examiner for code enforcement proceedings. The frequency of hearings will be based upon the number of cases to be heard. If necessary, the Hearing Examiner may also set special hearings that may occur on any day. The code enforcement section will schedule cases to be heard by the Hearing Examiner. All code enforcement proceedings and hearings will be open to the public, but no public input will be taken.
  - ~~(b) Before the hearing, the Director will give the alleged violator the opportunity to enter into an Agreed Order Finding Violation with the County.~~
- ~~(c) *Hearing agenda.* Each item on the day's agenda will be addressed in one of the following manners:~~
  - ~~(1) Removed as corrected;~~
  - ~~(2) Withdrawn from prosecution;~~
  - ~~(3) Withdrawn for re-noticing or other change;~~
  - ~~(4) Continued to a date certain;~~
  - ~~(5) Through an Agreed Order; or~~
  - ~~(6) Heard and decided.~~
- ~~(d)~~(e) *Prosecution of the case.* Each case on the code enforcement docket will be presented to the Hearing Examiner by the County's Code Enforcement department or County Attorney's Office on the date of the hearing unless the case has been abated, resolved through a Code Enforcement Agreement, or a request for continuance has been granted. The County will be entitled to recover prosecution costs if the County prevails. The issuance of an Order Finding Violation will serve as evidence the County prevailed in prosecuting the case.
- ~~(e)~~(d) *Hearing testimony.* All testimony will be under oath and recorded. Testimony will be taken from a code inspector and, if present, the alleged violator. Formal rules of evidence will not apply, but fundamental due process will be observed and will govern the proceedings.
- ~~(f)~~(e) *Decisions.* At the conclusion of each case heard that was not continued for additional review, the Hearing Examiner will make findings of fact, conclusions of law, and a decision, based on the evidence of record.
- ~~(g)~~(f) *Hearing Examiner orders.*

(1) After the close of the day's hearings, the Hearing Examiner will issue a written non-final Order of Continuance, an Order Finding Violation, or an Order Finding No Violation. The Orders Finding Violation or Finding No Violation are final orders.

(2) Orders Finding Violation.

- a. The Order Finding Violation must include the actions necessary to correct the violation, the fine to be imposed if the violation is not corrected, and an award of the prosecution costs due and owing to the County.
- b. The Hearing Examiner has the discretion to grant additional time to correct the violation. The written Order will state the date of correction.
- c. Upon finding a repeat violation, the Hearing Examiner ~~may~~ must order the fine imposed pursuant to sec 2-427 to begin on the date the code inspector discovered the repeat violation.

Committee comment: The LPA recommended keeping the word “may” rather than replacing it with “must” in subsection c., citing concerns about removing the ability for the HEX to use discretion with respect imposing fines. Staff recommends retaining the language as written above because minimum fines are now established in LDC Section 2-427.

- d. Upon finding a violation warrants an immediate hearing, as contemplated by section 2-424(e), the Hearing Examiner may order the violator to pay a fine and will notify the Division of Codes and Building Services of the finding. The division may make the repairs to bring the property into compliance and charge the violator the reasonable costs for the repairs, along with the fine imposed by the Hearing Examiner.

(3) Orders Imposing Fines.

- a. Upon receipt of a sworn statement by the Director that a code enforcement violation has not been corrected by the time set in the Order Finding Violation, the Hearing Examiner ~~may~~ shall order the violator to pay the fine specified in sec 2-427 or grant a continuance if a request has been made and good cause shown to grant the continuance. The imposition of the fine will be reflected in a written Order Imposing Fine, which will be sent to the violator. No hearing is required for the imposition of the fine noted in the Order Finding Violation.

Committee comment: The LPA recommended relocating the added language in subsection (3)a to subsection (2)c above to allow the HEX to grant a continuance in lieu of imposing fines. Staff clarified that subsection (2)c pertains to repeat violations.

- b. If a dispute arises as to whether correction occurred within the set timeframe, the Hearing Examiner may grant a request for a hearing to review the evidence as to correction. Requests for a review hearing must be in writing and set forth the reasons for dispute on the matter of correction. The request

must be made either on the date set for correction or within 20 days thereafter.

- c. If review of the Order Imposing Fine is not requested as indicated above or the Order is reviewed and upheld, the Order Imposing Fine is a final order.

## **Sec. 2-427. - Penalties and liens.**

Staff note: Revise section to specify/clarify fines and applicability under Code Enforcement Agreement. Specify that fines pursuant to a code enforcement agreement may not be altered without County Manager approval. Add clarifying language for fines above minimum specified fines in subsection (a)(1). Update cross-reference. Provide criteria for mitigation of code enforcement fines and costs.

### Committee comments:

- The LDCAC questioned why a minimum fine is being proposed and how long it would take for fines to begin accruing, expressing concerns about cost. Staff clarified that the purpose of the code enforcement is compliance through abatement, and that fines only begin accruing after there is an Order Finding Violation issued by the Hearing Examiner. Staff noted that typical practice is to allow violators adequate time to abate a violation through extensions and continuances.
- The LPA debated adding additional language to subsection (a)(1) to limit fines to only those costs incurred by the county as a result of adjudication. There was discussion over adding this language, with some LPA members noting that the section, as written, provides for flexibility in assessing fines. Staff clarified the code enforcement process, noted the ability for fine mitigation after abatement, and noted that there is a minimum administrative fee of \$285 for administrative costs when a case is heard by the HEX.

### **(a) Penalties.**

- (1) Fines imposed under this section for the first violation will be no less than \$25 per day and no greater than \$250 per day. Fines imposed under this section for a repeat violation will be no less than \$50 per day and no greater than \$500 per day. Unless agreed upon by the County Manager or designee, fines imposed pursuant to a Code Enforcement Agreement must be imposed in accordance with the provisions of the Code Enforcement Agreement. Fines imposed under this section may not exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if If the Hearing Examiner finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. Further, the fine may include the cost of all repairs incurred by the county as well as the costs of prosecuting the case before the Hearing Examiner.
- (2) For purposes of this article, prosecution costs include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.



- (3) The following factors will be considered by the Hearing Examiner in determining the fine to be imposed above the minimum fine specified above:
  - a. The gravity of the violation;
  - b. Actions taken by the violator to correct the violation; and
  - c. Previous violations committed by the violator.
- (4) The Hearing Examiner may mitigate fines imposed under this section, as provided in section 2-427~~(g)~~.

*Subsections (b) through (g) remain unchanged.*

(h) Mitigation of ~~lien~~ Code Enforcement Fines and Costs. Once the violation has been abated, tThe Hearing Examiner has the authority to mitigate code enforcement fines and costs by reducing or eliminating fines and costs imposed by Hearing Examiner's Orders up to the point of the county filing for foreclosure of the lien.

(1) Prior to mitigating an Order imposing a fine entered pursuant to a Code Enforcement Agreement, the Hearing Examiner must find that the request meets the requirements of 2-427(a)(3), and, the failure to abate the violation was the result of excusable neglect or the ability to abate the violation was outside the control of person requesting the Mitigation during the time given for abatement and the individual diligently pursued abatement once able to do so.

(2) The person requesting the mitigation has the burden to demonstrate that the requirements for mitigation have been met.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted 5-2 to find the proposed amendments consistent with the Lee Plan, subject to suggested changes to Sections 2-425 and 2-427.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 2: Delegation of Decision-making to HEX for Conventional Rezoning Requests**

AMENDMENT SUMMARY

*Substantive amendment affecting LDC Sections 34-83 and 34-145*

- Issue: The final decision on all conventional rezoning requests resides with the Board of County Commissioners (BCC), except for rezoning requests to Environmentally Critical (EC), which currently resides with the HEX.
- Solution: Amend the LDC to allow the HEX to provide the final decision in all conventional rezoning requests.
- Outcome: Streamlines rezoning process by eliminating the public hearing before the BCC.

**CHAPTER 34 – ZONING**

**ARTICLE II. – ADMINISTRATION**

**DIVISION 2. – BOARD OF COUNTY COMMISSIONERS**

**Sec. 34-83 – Functions and Authority.**

Staff note: modify language to reflect delegation of conventional rezoning authority to HEX.

(a) Zoning actions.

- (1) *Function.* Unless another approval process is authorized by County ordinance, the Board of County Commissioners must hold public hearings to consider the following applications: planned development rezoning, ~~requests for variances, and special exceptions, which are part of an application for a rezoning,~~ MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for Developments of County Impact, appeals from decisions of the Hearing examiner concerning wireless communication facilities, developments of regional impact, and any other action in conjunction with such applications.
- (2) *Considerations.* In rendering its decision, the Board must consider the following:
- a. The recommendations of the Hearing Examiner, Staff, or the Applicant when applicable.
  - b. Testimony received during public hearing before the Board.
  - c. The evidence included with the Hearing Examiner's recommendation.
- (3) *Findings/review criteria.*
- a. Before granting a planned development rezoning, ~~special exception or variance in connection with a rezoning,~~ or appeal of a Hearing Examiner decision, the

Board must find that the application satisfies the applicable review criteria in section 34-145.

- b. If a planned development rezoning request complies with the review criteria, the Board may deny the request if it finds that maintaining the existing zoning designation accomplishes a legitimate public purpose and is not arbitrary, discriminatory, or unreasonable.

(4) Decisions and authority.

- a. In exercising its authority, the Board:

1. May approve the request, deny the request, or remand the case for further proceedings before the Hearing Examiner.
  - a) In reaching its decision, the Board may, but is not required to, adopt the Hearing Examiner's recommendation, Staff's recommendation, or the Applicant's recommendation. The Board may render its own decision based on competent substantial evidence presented in the record. A decision to adopt the recommendation by the Hearing Examiner, Applicant, or Staff will include the written findings, conclusions, and conditions provided in the applicable recommendation.
  - b) The Board may remand a case back to the Hearing Examiner for further review of specific issue(s). The scope of the remanded hearing will be limited to the specific issue(s) identified by the Board.
2. May not approve a rezoning other than the rezoning published in the newspaper, unless the change is more restrictive than the proposed rezoning published.
3. Has the authority to attach conditions deemed necessary for the protection of the public health, safety, comfort, convenience, or welfare to an approval of a:
  - a) Development of Regional Impact
  - b) Planned Development
  - c) Use of TDR or affordable housing bonus density units in conjunction with a ~~rezoning~~ planned development zoning request; and
  - d) ~~Special exception or Variance with their purview.~~Conditions must reasonably relate to the action requested.
4. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the Board must consider the decision as recommendation.

- b. The decision of the Board is final. If there is a tie vote, the matter will be continued until the next regularly scheduled Board meeting for decisions on zoning matters.
- c. Denial by the Board is denial with prejudice unless otherwise specified.

*Remainder of section unchanged.*

## **DIVISION 4. – HEARING EXAMINER**

### **Sec. 34-145 – Functions and authority.**

Staff note: Modify language to reflect delegation of conventional rezoning authority to HEX. Establish the ability for an applicant or agent filing an application for a conventional rezoning to request a public hearing before the BCC in accordance with section 34-83.

#### **Committee comments:**

- The LDCAC questioned whether privately-initiated requests for rezoning to Environmentally Critical (EC) are permitted. Staff initially responded no, but subsequently clarified that private requests to rezone to the EC zoning district are permitted.
- The LDCAC questioned whether the HEX will provide notification of the ability for an applicant to seek a hearing before the BoCC. Staff intends to work with the HEX to modify pre-hearing instructional materials to identify an applicant's right to seek a hearing before the BoCC if the proposed amendments are approved.
- The LDCAC questioned whether an applicant can opt out of the BoCC hearing after receiving a favorable recommendation from the HEX. Staff noted that once the right to be heard before the BoCC is invoked by the applicant, the HEX will issue a recommendation for consideration by the BoCC in lieu of a final decision, and that the case must be heard and decided by the BoCC once the right to hearing is invoked by the applicant.
- The LPA was in favor of the proposed amendments, but had concerns regarding an applicant's inability to opt-out of the elective hearing before the BoCC if the HEX approves a request. Staff noted that the HEX will either prepare a recommendation for the BoCC, or a final decision, depending on the applicant's election, and that allowing for the ability to opt-out presents logistical problems with how the final HEX decision or recommendation is prepared.
- The LPA discussed moving the deadline for an applicant to request a BoCC hearing from the 48-hour notice to the end of the HEX hearing. This change has been made accordingly.
- The LPA raised concerns about eliminating an opportunity for public participation. Staff noted that there are limited topics of discussion with respect to conventional rezonings (i.e., there are no conditions and deviations to discuss), and noted that participation is arguably strengthened because there are no time or evidentiary constraints when providing input before the HEX.

*Subsection (a) remains unchanged.*

(b) *Variances.*

*Subsections (1) through (4) remain unchanged.*

(5) *Decisions.*

- c. Decisions of the Hearing Examiner on variances ~~filed with an application to rezone property, or from the Airport Compatibility District regulations,~~ must be in the form of a recommendation to the Board.

*Remainder of section unchanged.*

(c) *Special Exceptions.*

*Subsections (1) through (3) remain unchanged.*

(4) *Decisions.*

- ~~e. Decisions of the Hearing Examiner on special exceptions filed with an application to rezone property must be in the form of a recommendation to the Board.~~

*Remainder of section unchanged.*

(d) *Zoning matters.*

(1) *Authority.*

- a. The Hearing Examiner will hear and decide applications for conventional rezoning.

~~a. b.~~ Unless otherwise specified below, the Hearing Examiner serves in an advisory capacity to the Board on planned development zoning matters requests and does not make the final determination.

~~b. c.~~ The Hearing Examiner may not approve or recommend approval of a rezoning that is more expansive than the request published in the newspaper. The Hearing Examiner may approve or recommend approval of a zoning district that is more restrictive than the published request.

~~c. d.~~ The Hearing Examiner may recommend conditions of approval on requests for planned developments ~~and requests for special exceptions or variances heard with a rezoning application.~~

~~d. e.~~ The Hearing Examiner has the final decision making authority on applications to rezone property to a conventional zoning district. An applicant or agent applying for a conventional rezoning may request a public hearing before the Board of County Commissioners in accordance with section 34-83(a)(1). Such a request must be made prior to the conclusion of the public hearing before the Hearing Examiner.

~~e. f.~~ The Hearing Examiner has the final decision making authority on Board initiated applications to rezone County owned property to the Environmentally Critical district.

- (2) *Functions.* The Hearing Examiner has the duty and responsibility to make recommendations to the Board on applications for the following requests:
- a. Rezoning ~~including Development of County Impact, to~~ planned developments, ~~and conventional~~ zoning districts.
  - b. Developments of Regional Impact and Florida Quality Developments, with or without a companion request for rezoning.
  - c. ~~Special exceptions and variances heard in conjunction with a rezoning.~~
  - d. ~~Variances from County ordinances that specify variances may only be granted by the Board.~~
  - e. d. Use of bonus density in conjunction with a rezoning to a planned development district.
  - f. ~~e. Amendments to Development of Regional Impact Development Orders under F.S. Ch. 380. sec. 380.06(19)(e)2.~~
- (3) *Considerations.* The Hearing Examiner must consider the following:
- a. Testimony and evidence from the Applicant;
  - b. Testimony and evidence from the Staff, including the Staff Report and attachments.
  - c. Testimony and evidence from participants;
  - d. The Lee Plan;
  - e. This Code;
  - f. Applicable regulations.
- (4) *Findings/review criteria.*
- a. Before approving or recommending approval for:
    - 1. Rezoning. The Hearing Examiner must find the request:
      - a) Complies with the Lee Plan;
      - b) Meets this Code and other applicable County regulations or qualifies for deviations;
      - c) Is compatible with existing and planned uses in the surrounding area;
      - d) Will provide access sufficient to support the proposed development intensity;
      - e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;

f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and

g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

2. *Planned Development Rezoning*s. The Hearing Examiner must also find:

a) The proposed use or mix of uses is appropriate at the proposed location;

b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development.

c) If the application includes deviations pursuant to section 34-373(a)(9), that each requested deviation:

1) Enhances the achievement of the objectives of the planned development; and

2) Preserves and promotes the general intent of this Code to protect the public health, safety, and welfare.

d) Mine excavation planned development. The request meets the following:

1) The mining activity will not create or cause adverse effects from dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.

2) The Applicant has given special consideration to the protection of surrounding private and publically owned conservation and preservation lands.

3) Approval of the request:

i. Will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on an off-site during and upon completion of the mining operations;

ii. Will serve to preserve, restore and enhance natural flow ways deemed important for local or regional water resource management.

iii. Preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.

iv. Provides interconnection to off-site preserve areas and conservation lands via indigenous preservation or restoration, and planted buffer areas.

4) The site is designed to:

i. Avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.

ii. Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.

iii. Mimic or restore the natural system pre-disturbed water budget to the maximum extent practicable.

5) Traffic mitigation standards in section 12-116.

6) Reclamation standards in section 12-119.

3. *Rezoning to the Environmentally Critical (EC) district.* The Hearing Examiner must make the additional finding that rezoning to the EC district is necessary to prevent public harm or meet a public need.

b. *Denials.* Before denying or recommending denial of a rezoning request that complies with the applicable review criteria, the Hearing Examiner must find maintaining the existing zoning designation is not arbitrary, discriminatory, or unreasonable and accomplishes a legitimate public purpose.

(5) *Recommendations.* The Hearing Examiner's recommendation on planned development and DRI zoning matters will be provided in a written report to the Board.

(6) *Recommendations on Planned Developments.*

a. If the Hearing Examiner determines that a recommended condition is insufficient, the Hearing Examiner may propose an alternate condition for consideration by the Board.

b. If the Hearing Examiner concludes that the application omits necessary deviation(s), those deviation(s) may be included in the recommendation without an additional hearing, provided evidence exists in the record to support the omitted deviation(s).

c. The Hearing Examiner may not recommend conditions or deviations allowing use variances or deviation from definitions or procedural requirements of this Code or other Ordinance.

d. The Hearing Examiner may recommend that the applicant obtain administrative approval of a more detailed development plan for each development area as a condition of approval of a deviation.

(7) *Recommendations on applications for amendments to development of regional impact development orders pursuant to F.S. 380.06(19)(e)(2)(d)(7), (as amended).*



Requests for amendments to development of regional impact development orders pursuant to F.S. sec. 380.06(19)(e)(2) do not require a public hearing before the Hearing Examiner. After staff review, Staff will prepare a Staff report with a recommendation, including a determination regarding the consistency of the request with F.S. 380.06(19)(e)(2), (as amended). The Staff report, application materials, and additional documentation requested by the Hearing Examiner, will be sent to the Hearing Examiner for review and preparation of a written recommendation to the Board, including a determination regarding the consistency of the request with F.S. 380.06(19)(e)(2), (as amended). Unless unavoidable delay occurs, the Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report and required documents. The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing. If the Board determines that the request does not meet the requirements of F.S. sec. 380.06(19)(e)(2), the Board must deny the request and remand the application to Staff for processing as an application of Notice of Proposed Change or other request under F.S. ch. 380.

- (e) *Notice of intent to deny based on insufficient information.* If the Hearing Examiner intends to deny or recommend denial of an application/appeal described in subsections (a) through (d) based on the Applicant's/Appellant's failure to provide evidence adequate to address particular issues, the Hearing Examiners may send a notice of intent to deny based on insufficient evidence to all Parties and participants or reopen the hearing. The procedure for issuing the notice and the responses to the notice are set forth in the Administrative Codes.
- (f) The Hearing Examiner is limited to the authority granted within County regulations. The Hearing Examiner may consider state, federal or common law in the application of the County regulations.

### **34-146 – Final decision; judicial review**

**Staff note: modify language to reflect delegation of decision-making on conventional rezonings to HEX.**

- (a) The decision of the Hearing Examiner is final for the following:
  - (1) Administrative appeals that are not appealed to , and decided by, the Board;
  - (2) Variances, and special exceptions, except when those requests are:
    - ~~a. Part of a rezoning or other request that requires final decision by the Board;~~
    - ~~or~~
    - ~~b. a. A wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.~~
  - (3) Rezonings to conventional zoning districts.
  - (4) Board initiated applications to rezone County owned property to the Environmentally Critical (EC) zoning district.
- (b) Judicial review of final decisions of the Hearing Examiner will be in circuit court. This review may only be obtained by filing a petition for writ of certiorari in accordance with

the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the final decision has been rendered.

- (c) A decision is “rendered” on the date it is reduced to writing, signed and dated by the Hearing Examiner.
- (d) The person making application to the Hearing Examiner is a necessary and indispensable party to actions seeking judicial review.
- (e) This section does not preclude action pursuant to F.S. sec. 70.51 or sec. 163.3215.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted 6-1 to find the proposed amendments consistent with the Lee Plan, noting concerns regarding the ability for an applicant to opt-out of a hearing before the BoCC.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)  
MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 3: Delegation of Decision-making to HEX for PD/PUD Amendments**

**AMENDMENT SUMMARY**

*Substantive amendment affecting LDC Section 34-83 and 34-145*

**Issue:** The final decision on amendments to planned developments and amendments to Planned Unit Developments resides with the Board of County Commissioners (BCC).

**Solution:** Amend the LDC to allow the HEX to provide the final decision for certain amendments to planned developments and amendments to planned unit developments that are not subject to separate ordinance. HEX decision-making for PD amendments would be limited to:

- (1) Amendments to the master concept plan, schedule of uses, or property development regulations that do not increase approved density or intensity;
- (2) Requests for consumption on premises, wireless communication facilities, or an increase in the maximum number of fuel pumps permitted in conjunction with a convenience food and beverage store provided that the use is already approved;
- (3) Changes to conditions and deviations; and
- (4) Establishment or increase in density within the Mixed Use Overlay;

**Outcome:** Streamlines rezoning process as appropriate by eliminating the public hearing before the BCC in certain instances.

**CHAPTER 34 – ZONING**

**ARTICLE II. – ADMINISTRATION**

**DIVISION 2. – BOARD OF COUNTY COMMISSIONERS**

**Sec. 34-83 – Functions and Authority.**

Staff note: Modify language to reflect delegation of decision-making authority for conventional rezonings, PD amendments, and PUD amendments not governed by county ordinance to HEX.

**Committee comments:**

- The LDCAC questioned what types of requests will have to go to the BoCC if this is approved. Staff noted that there are certain requests that staff does not have the ability to approve administratively, but that do not increase density or intensity of a previously-approved planned development rezoning. The intent of the proposed amendments is to

allow the HEX to have final decision-making authority in those instances, which will result in a 42 percent reduction in the number of PD rezoning requests heard by the BoCC.

(a) Zoning actions.

(1) *Function.* Unless another approval process is authorized by County ordinance, the Board of County Commissioners must hold public hearings to consider the following applications: planned development rezoning, except as excluded by section 34-145(d)(1)e, requests for variances, and special exceptions, which are part of an application for a rezoning, MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for Developments of County Impact, appeals from decisions of the Hearing examiner concerning wireless communication facilities, developments of regional impact, and any other action in conjunction with such applications.

(2) *Considerations.* In rendering its decision, the Board must consider the following:

- a. The recommendations of the Hearing Examiner, Staff, or the Applicant when applicable.
- b. Testimony received during public hearing before the Board.
- c. The evidence included with the Hearing Examiner's recommendation.

(3) *Findings/review criteria.*

- a. Before granting a planned development rezoning or an amendment to a planned development, ~~special exception or variance in connection with a rezoning~~, or appeal of a Hearing Examiner decision, the Board must find that the application satisfies the applicable review criteria in section 34-145.
- b. If a planned development rezoning or a planned development amendment request complies with the review criteria, the Board may deny the request if it finds that maintaining the existing zoning designation accomplishes a legitimate public purpose and is not arbitrary, discriminatory, or unreasonable.

(4) *Decisions and authority.*

- a. In exercising its authority, the Board:
  1. May approve the request, deny the request, or remand the case for further proceedings before the Hearing Examiner.
    - a) In reaching its decision, the Board may, but is not required to, adopt the Hearing Examiner's recommendation, Staff's recommendation, or the Applicant's recommendation. The Board may render its own decision based on competent substantial evidence presented in the record. A decision to adopt the recommendation by the Hearing Examiner, Applicant, or Staff will include the written findings, conclusions, and conditions provided in the applicable recommendation.

- b) The Board may remand a case back to the Hearing Examiner for further review of specific issue(s). The scope of the remanded hearing will be limited to the specific issue(s) identified by the Board.
  - 2. May not approve a rezoning other than the rezoning published in the newspaper, unless the change is more restrictive than the proposed rezoning published.
  - 3. Has the authority to attach conditions deemed necessary for the protection of the public health, safety, comfort, convenience, or welfare to an approval of a:
    - a) Development of Regional Impact
    - b) Planned Development
    - c) Use of TDR or affordable housing bonus density units in conjunction with a ~~rezoning~~ planned development zoning request; and
    - d) ~~Special exception or Variance with their purview.~~
- Conditions must reasonably relate to the action requested.
- 4. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the Board must consider the decision as recommendation.
  - b. The decision of the Board is final. If there is a tie vote, the matter will be continued until the next regularly scheduled Board meeting for decisions on zoning matters.
  - c. Denial by the Board is denial with prejudice unless otherwise specified.

*Remainder of section unchanged.*

## **DIVISION 4. – HEARING EXAMINER**

### **Sec. 34-145 – Functions and authority.**

Staff note: Modify language to reflect delegation of decision-making authority for conventional rezonings, certain PD amendments, and PUD amendments not governed by county ordinance to HEX.

Amend subsections (b) and (c) to reflect delegation of decision-making authority for conventional rezonings to HEX.

Amend Subsection (d) to:

- Reflect delegation of decision-making authority for conventional rezonings, certain PD amendments and PUD amendments not governed by county ordinance to HEX;
- Clarify language regarding criteria for deviation approval;
- Establish the ability for an applicant or agent filing an application for a PD amendment where HEX is final decision-maker to request public hearing before the BCC in accordance with section 34-83;
- Add new subsection (8) outlining the process for changes and modifications to HEX-recommended conditions of approval prior to final consideration by the BCC; and
- Update statutory cross-reference for DRIs and revise subsection (d)(7) to clarify County's DRI amendment process.

*Subsection (a) remains unchanged.*

(b) *Variances.*

*Subsections (1) through (4) remain unchanged*

(5) *Decisions.*

- c. Decisions of the Hearing Examiner on variances ~~filed with an application to rezone property~~, or from the Airport Compatibility District regulations, must be in the form of a recommendation to the Board.

*Remainder of section unchanged.*

(c) *Special Exceptions.*

*Subsections (1) through (3) remain unchanged.*

(4) *Decisions.*

*Subsections a. and b. remain unchanged.*

- ~~e. Decisions of the Hearing Examiner on special exceptions filed with an application to rezone property must be in the form of a recommendation to the Board.~~

*Remainder of section unchanged.*

(d) *Zoning matters.*

(1) *Authority.*

- a. The Hearing Examiner will hear and decide applications for conventional rezoning, amendments to approved planned developments pursuant to section 34-145(d)(1)e, and, notwithstanding section 34-1038(b), amendments to planned unit developments that are not subject to separate ordinance.
- ~~a. b.~~ Unless otherwise specified below, tThe Hearing Examiner serves in an advisory capacity to the Board on new planned development zoning matters requests, amendments to planned developments exceeding the scope of amendments permitted by section 34-145(d)(1)e.3, amendments to approved MEPDs, and amendments to planned unit developments approved by separate ordinance and does not make the final determination.
- ~~b. c.~~ The Hearing Examiner may not approve or recommend approval of a rezoning that is more expansive than the request published in the newspaper. The Hearing Examiner may approve or recommend approval of a zoning district that is more restrictive than the published request.
- ~~c. d.~~ The Hearing Examiner may recommend impose conditions of approval on requests for to amend planned developments where the Hearing Examiner retains final decision-making authority and requests for special exceptions or variances heard with a rezoning application. The Hearing Examiner may recommend conditions of approval on requests for new planned developments or amendments to existing planned developments subject to Board approval.
- d. e. The Hearing Examiner has the final decision-making authority on the following matters:
  1. Board-initiated applications to rezone County-owned property to the Environmentally Critical (EC) district;
  2. Applications for conventional rezoning;
  3. Applications for amendments to planned developments when the request is limited to:
    - i. Amendments to the master concept plan, schedule of uses, or property development regulations that do not affect the maximum density or intensity permitted in the planned development;
    - iii. Requests for consumption on premises;
    - iv. Requests for wireless telecommunication facilities;
    - v. Requests for an increase in the maximum number of fuel pumps in conjunction with a convenience food and beverage store provided that the use is already approved in the planned development;

v. Changes to conditions and deviations; or

vi. Requests to establish or increase density within the Mixed Use Overlay; and

Committee comment: The LPA expressed concerns with allowing the HEX final decision-making authority to approve requests to establish or increase density within the Mixed Use Overlay.

4. Notwithstanding section 34-1038(b), amendments to planned unit developments that are not subject to separate ordinance.

5. An applicant or agent applying for an amendment to a planned development in which the Hearing Examiner has the final decision-making authority may request a public hearing before the Board of County Commissioners in accordance with section 34-83(a)(1). Such a request must be made prior to the conclusion of the public hearing before the Hearing Examiner.

Staff note: subsection 5 has been revised to allow an applicant to request a second hearing before the BoCC at any time before the conclusion of the HEX hearing consistent with the LPA's recommendation regarding delegation of decision-making authority for conventional rezoning request to the HEX.

(2) *Functions.* The Hearing Examiner has the duty and responsibility to make recommendations to the Board on applications for the following requests:

a. ~~Rezoning including Development of County Impact, New planned development rezoning requests, and conventional zoning districts or~~ amendments to planned developments exceeding the scope of amendments permitted by section 34-145(d)(1)e.3.

b. Developments of Regional Impact and Florida Quality Developments, with or without a companion request for rezoning.

~~c. Special exceptions and variances heard in conjunction with a rezoning.~~

~~c.d.~~ Variances from County ordinances that specify variances may only be granted by the Board.

~~d.e.~~ Use of bonus density in conjunction with a rezoning to a planned development district except as permitted by section 34-145(d)(1)e.3.

~~e.f.~~ Amendments to Development of Regional Impact Development Orders under F.S. Chapter 380-§380.06(19)(e)2.

(3) *Considerations.* The Hearing Examiner must consider the following:

a. Testimony and evidence from the Applicant;

b. Testimony and evidence from the Staff, including the Staff Report and attachments.



- c. Testimony and evidence from participants;
- d. The Lee Plan;
- e. This Code;
- f. Applicable regulations.

(4) *Findings/review criteria.*

a. Before approving or recommending approval for:

1. Rezoning. The Hearing Examiner must find the request:

- a) Complies with the Lee Plan;
- b) Meets this Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

2. *Planned Development Rezoning*s. The Hearing Examiner must also find:

- a) The proposed use or mix of uses is appropriate at the proposed location;
- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development.
- c) If the application includes deviations pursuant to section 34-373(a)(9), that each requested deviation:

Committee comment: The LPA recommended removing the deletion of “the achievement of” from subsection 1). Staff has made this change accordingly.

- 1) Enhances the achievement of the objectives of the planned development; and
- 2) ~~Preserves and promotes the general intent of this Code to~~  
Protects the public health, safety, and welfare.
- d) Mine excavation planned development. The request meets the following:

- 1) The mining activity will not create or cause adverse effects from dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.
- 2) The Applicant has given special consideration to the protection of surrounding private and publically owned conservation and preservation lands.
- 3) Approval of the request:
  - i. Will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on an off-site during and upon completion of the mining operations;
  - ii. Will serve to preserve, restore and enhance natural flow ways deemed important for local or regional water resource management.
  - iii. Preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.
  - iv. Provides interconnection to off-site preserve areas and conservation lands via indigenous preservation or restoration, and planted buffer areas.
- 4) The site is designed to:
  - i. Avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
  - ii. Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
  - iii. Mimic or restore the natural system pre-disturbed water budget to the maximum extent practicable.
- 5) Traffic mitigation standards in section 12-116.
- 6) Reclamation standards in section 12-119.
3. *Rezoning to the Environmentally Critical (EC) district.* The Hearing Examiner must make the additional finding that rezoning to the EC district is necessary to prevent public harm or meet a public need.
- b. *Denials.* Before denying or recommending denial of a rezoning request that complies with the applicable review criteria, the Hearing Examiner must find maintaining the existing zoning designation is not arbitrary, discriminatory, or unreasonable and accomplishes a legitimate public purpose.
- (5) *Recommendations.* The Hearing Examiner's recommendation on planned development and DRI zoning matters will be provided in a written report to the Board.

(6) *Recommendations on Planned Developments.*

- a. If the Hearing Examiner determines that a recommended condition is insufficient, the Hearing Examiner may propose an alternate condition for consideration by the Board.
- b. If the Hearing Examiner concludes that the application omits necessary deviation(s), those deviation(s) may be included in the recommendation without an additional hearing, provided evidence exists in the record to support the omitted deviation(s).
- c. The Hearing Examiner may not recommend conditions or deviations allowing use variances or deviation from definitions or procedural requirements of this Code or other Ordinance.
- d. The Hearing Examiner may recommend that the applicant obtain administrative approval of a more detailed development plan for each development area as a condition of approval of a deviation.

(7) *Recommendations on applications for amendments to development of regional impact development orders pursuant to F.S. 380.06(19)(e)(2)(d)(7), (as amended).*

Requests for amendments to development of regional impact development orders pursuant to F.S. sec. 380.06(19)(e)(2) do not require a public hearing before the Hearing Examiner. After staff review, Staff will prepare a Staff report with a recommendation, including a determination regarding the consistency of the request with F.S. 380.06(19)(e)(2), (as amended). The Staff report, application materials, and additional documentation requested by the Hearing Examiner, will be sent to the Hearing Examiner for review and preparation of a written recommendation to the Board, including a determination regarding the consistency of the request with F.S. 380.06(19)(e)(2), (as amended). Unless unavoidable delay occurs, the Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report and required documents. The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing. If the Board determines that the request does not meet the requirements of F.S. sec. 380.06(19)(e)(2), the Board must deny the request and remand the application to Staff for processing as an application of Notice of Proposed Change or other request under F.S. ch. 380.

- (e) *Notice of intent to deny based on insufficient information.* If the Hearing Examiner intends to deny or recommend denial of an application/appeal described in subsections (a) through (d) based on the Applicant's/Appellant's failure to provide evidence adequate to address particular issues, the Hearing Examiners may send a notice of intent to deny based on insufficient evidence to all Parties and participants or reopen the hearing. The procedure for issuing the notice and the responses to the notice are set forth in the Administrative Codes.

- (f) The Hearing Examiner is limited or the authority granted within County regulations. The Hearing Examiner may consider state, federal or common law in the application of the County regulations.

### **34-146 – Final decision; judicial review**

Staff note: revise language to remove reference to final decision-making authority of HEX (now covered in 34-145). Renumber accordingly. Retain right of judicial review of final decisions of the HEX in circuit court.

~~(a) The decision of the Hearing Examiner is final for the following:~~

~~(1) Administrative appeals that are not appealed to , and decided by, the Board;~~

~~(2) Variances, and special exceptions, except when those requests are:~~

~~a. Part of a rezoning or other request that requires final decision by the Board;  
or~~

~~b. A wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.~~

~~(3) Board initiated applications to rezone County owned property to the Environmentally Critical (EC) zoning district.~~

~~(a)(b)~~ Judicial review of final decisions of the Hearing Examiner will be in circuit court. This review may only be obtained by filing a petition for writ of certiorari in accordance with the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the final decision has been rendered.

~~(b)(c)~~ A decision is “rendered” on the date it is reduced to writing, signed and dated by the Hearing Examiner.

~~(c)(d)~~ The person making application to the Hearing Examiner is a necessary and indispensable party to actions seeking judicial review.

~~(d)(e)~~ This section does not preclude action pursuant to F.S. sec. 70.51 or sec. 163.3215.

#### Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted 6-1 to find the proposed amendments consistent with the Lee Plan, with the condition that the BoCC retain authority over approving requests to establish or increase density within the Mixed Use Overlay.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 4: Changes to HEX Recommendations on Zoning Matters**

AMENDMENT SUMMARY

*Substantive amendment affecting LDC Section 34-83 and 34-145*

- Issue: The LDC does not currently establish a formal procedure for seeking changes to HEX recommendations, prior to the subsequent BCC hearing, on requests for rezoning. Current practice is that these changes are sought in writing (in advance of the BCC hearing) or at the BCC zoning hearing itself, placing the BCC in a position to approve changes that have not been formally considered by the HEX.
- Solution: Amend the LDC to establish a procedure for the HEX to consider requests for changes to HEX-recommended conditions of approval in advance of the BCC hearing. Currently drafted to require written submission to the HEX, with a copy to staff, at least 14 working days prior to the scheduled BCC public hearing date.
- Outcome: Provides for clarity and consistency by establishing a process to seek modifications to HEX conditions and further establishes a process for remand if requested modifications are not supported by the HEX case record.

PROPOSED LDC REVISIONS

**Sec. 34-145 – Functions and authority.**

Staff note: Amend section to add new subsection (d)(8) outlining process for changes/modifications to HEX-recommended conditions of approval prior to final consideration by the BCC.

Committee comments: None.

*Subsections (a) through (c) remain unchanged.*

*Subsections (d)(1) through (d)(7) remain unchanged.*

**(8) Conditions of Approval.**

- a. Except as provided in paragraph d. below, any Applicant or County Staff request for the Board to consider changes to Conditions of Approval recommended by the Hearing Examiner must be submitted in writing to the Hearing Examiner no later than 21 working days prior to the scheduled public hearing before the Board.**

- b. The Hearing Examiner will consider the basis for the requested change and may issue a memorandum in response, without further hearing, either approving or denying the requested changes. If the Hearing Examiner determines that additional competent substantial evidence is needed to support the proposed changes, the proposed changes are outside the scope of the testimony in the record, or that modifications of the proposed conditions materially alter the Hearing Examiner's Recommendation, the Hearing Examiner may recommend that the Board deny the requested changes or remand the case back to the Hearing Examiner to reopen the testimony portion of the Hearing and schedule the matter for further public hearings as needed. Notice of the new Hearing date will be provided to the Participants of Record and Parties. Testimony by the Parties and Public Participants will be limited to the requested changes to the Conditions of Approval.
- c. If an Applicant or County Staff fails to submit the request for changes as required in paragraph a. above, the Board may continue the case to a date certain to allow the Hearing Examiner to review the request, remand the case to the Hearing Examiner for further consideration of the requested changes, or deny the requested changes.
- d. This subsection (8) does not apply to requests for scrivener's errors, changes resulting from the Board's decision not to adopt the Hearing Examiner's recommendation or portions thereof, changes requested by the Board or Public Participants at the public hearing before the Board, or changes requested by the County Attorney's office to remove unenforceable conditions or to ensure the proposed conditions comply with State or Federal Law.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted unanimously to find the proposed amendments consistent with the Lee Plan.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 5: HEX-Related amendments to DRIs**

*Clean-up amendment affecting section 34-145*

*NOTE: Prior direction provided by BCC on February 2, 2021*

**AMENDMENT SUMMARY**

Issue: Existing LDC language regarding HEX recommendations on Developments of Regional Impact is out of compliance with state statute.

Solution: Amend the LDC to align with state statute.

Outcome: Clarifies staff and Hearing Examiner roles in DRI review process and ensures consistency with state statute.

**CHAPTER 34 – ZONING**

**ARTICLE II. – ADMINISTRATION**

**DIVISION 4. – HEARING EXAMINER**

**Sec. 34-145. - Functions and authority.**

**Staff note:** Revise subsection (d)(7) to pdate statutory cross-reference consistent with state statute.

**Committee comments:** None.

*Subsections (a) through (c) remain unchanged.*

*Subsection (d)(1) remains unchanged.*

*Subsection (d)(2)a through (d)(2)e remain unchanged.*

- f. Amendments to Development of Regional Impact Development Orders under F.S. Chapter 380. ~~§ 380.06(19)(e)2.~~

*Subsection (d)(3) through (d)(6) remain unchanged.*

*(7) Recommendations on applications for amendments to development of regional impact development orders pursuant to F.S. 380. § 380.06(19)(e)(2), (as amended).*  
~~Requests for amendments to development of regional impact development orders pursuant to F.S. § 380.06(19)(e)(2) do not require a public hearing before the Hearing~~

~~Examiner. After staff review, Staff will prepare a Staff report with a recommendation, including a determination regarding the consistency of the request with F.S. § 380.06(19)(e)(2), (as amended). The Staff report, application materials, and additional documentation requested by the Hearing Examiner, will be sent to the Hearing Examiner for review and preparation of a written recommendation to the Board, including a determination regarding the consistency of the request with F.S. § 380.06(19)(e)(2), (as amended). Unless unavoidable delay occurs, the Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report and required documents. The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing. If the Board determines that the request does not meet the requirements of F.S. § 380.06(19)(e)(2), the Board must deny the request and remand the application to Staff for processing as an application of Notice of Proposed Change or other request under F.S. ch. 380.~~

Requests for amendments to development of regional impact development orders pursuant to F.S. sec. 380.06(7) do not require a public hearing before the Hearing Examiner. After review of the application, Staff will prepare a report and recommendation including an analysis of consistency with the Lee Plan and this Code. New conditions proposed by staff must be consistent with F.S. 380.06(7)(b). The Staff report and application material will be sent to the Hearing Examiner for preparation of a written recommendation to the Board. The Hearing Examiner may request additional documentation from Staff and Applicant.

The Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report or requested documents. The Hearing Examiner's recommendation must include a finding on whether the proposed amendment is consistent with the Lee Plan and this Code. New conditions recommended by the Hearing Examiner must be consistent with F.S. sec. 380.06(7)(b).

The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted unanimously to find the proposed amendments consistent with the Lee Plan.



**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 6: Administrative Appeals to HEX**

**AMENDMENT SUMMARY**

- Issue: Language regarding the authority of the HEX to hear appeals of administrative decisions is spread throughout the LDC.
- Solution: Amend the LDC to consolidate language regarding the authority of the HEX to hear appeals in LDC Section 34-145. Establish procedures for filing, standing to appeal, acceptance of appeal, nature of proceedings, considerations, and nature of relief.
- Outcome: Streamlines the LDC to provide single location establishing the authority of the HEX to preside over appeals of administrative decisions.

**CHAPTER 2 – ADMINISTRATION**

**ARTICLE II. – CONCURRENCY MANAGEMENT SYSTEM**

**DIVISION 1. – CONCURRENCY MANAGEMENT PROVISIONS**

**Sec. 2-52. - ReservedAppeals.**

**Staff note: Delete appeal-related language. Matters subject to appeal are addressed in Section. 34-145.**

~~Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, decisions made by the Director in the course of administering this article may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the Director or by virtue of its having been ordered by the County Hearing Examiner on an appeal reversing the Director's denial of the development permit, or by the Board of County Commissioners in cases where the Board has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~

## ARTICLE IV. – BONUS DENSITY

### DIVISION 2. – BONUS DENSITY PROGRAM

#### Sec. 2-147. – Procedure to approve bonus density.

Staff note: Delete appeal-related language. Matters subject to appeal are addressed in Section 34-145.

*Subsection (a) remains unchanged.*

*Subsection (b)(1) remains unchanged.*

*Subsection (b)(2) through (b)(2)a remains unchanged.*

- b. The Director's written findings conclude that, in addition to the minimum requirements provided in section 2-146, the proposed development is:
  1. Designed so that the resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity; and
  2. Will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

The Director's written approval may contain reasonable conditions to mitigate adverse impacts that could otherwise be created by the density increase. ~~The Director's decision may be appealed according to the provisions of chapter 34 for appeals of administrative decisions.~~

## CHAPTER 10 – DEVELOPMENT STANDARDS

### ARTICLE II. – ADMINISTRATION

#### DIVISION 2. – DEVELOPMENT ORDERS

##### SUBDIVISION II. - PROCEDURES

#### Sec. 10-112. – Reserved. ~~Appeals.~~

Staff note: Delete section. Matters subject to appeal and are proposed to be established in Section 34-145.

~~(a) *Right of appeal.*~~

- ~~(1) The applicant may file an appeal of any decision of the Development Review Director. Except as may be required by F.S. § 163.3215, and then only pursuant~~

~~to that statute, a third party does not have standing to appeal an administrative decision granting or denying a development order.~~

~~(2) An appeal is not a legal substitute for a variance. Any appeal that requests a departure from or waiver of the terms and conditions of this chapter will not be heard through the appeal process.~~

~~(b) *Procedure.* The appellant must file a written appeal of the Director of Development Review's decision in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions.~~

~~(c) *Decisions.*~~

~~(1) If the decision of the Development Review Director is upheld, then the applicant may redraft and resubmit all documents which are necessary for the appropriate approval in accordance with sections 10-109 and 10-110.~~

~~(2) If the decision of the Development Review Director is reversed without modifications, then the applicant may prepare the submittals required for final approval or be issued a development order by the Development Review Director, as appropriate.~~

~~(3) If the decision of the Development Review Director is modified on appeal, then the applicant may take the remedial steps necessary to correct the rejected submittals and resubmit them in accordance with sections 10-109 and 10-110.~~

~~(d) *Special Magistrate.*~~

~~(1) The applicant may file a request for relief under F.S. § 70.51, within 30 days from the conclusion of an administrative appeal or four months from the initiation of an administrative appeal, even if that appeal has not concluded.~~

~~(2) The request for relief must allege that the decision of the Director is unreasonable or unfairly burdens the use of the subject property. The request for relief will be heard by an impartial special magistrate in accordance with the procedure set forth in the Administrative Code.~~

~~(3) The request for relief under F.S. § 70.51, will not adversely affect the applicant's right to judicial review. However, a request for judicial review will waive the right to a special magistrate proceeding.~~

### **ARTICLE III. – DESIGN STANDARDS AND REQUIREMENTS**

#### **DIVISION 8. – PROTECTION OF HABITAT**

##### **Sec. 10-476. - Variance procedures and appeals.**

**Staff note: Correct scrivener's error in subsection a. Delete appeal-related language (subsection b). Matters subject to appeal are set forth in Section 34-145.**

(a) Requests for variances from the terms of this division will be administered and decided in accordance with the requirements for variances set forth in chapter 34.

~~(b) Any decision made by the Director or his designee may be appealed under the procedures set forth in chapter 34 for appeals of administrative decisions.~~

## CHAPTER 12 – RESOURCE EXTRACTION

### ARTICLE II. – MINING AND EXCAVATION

#### Sec. 12-124. - Appeals.

Staff note: Correct scrivener's error. Clarify language related to appeals.

A final decision of the Board of County Commissioners rendered with respect to a MEPD may be appealed in accordance with section 34-85.

~~Final Decisions~~ decisions rendered by a Director under this article may be appealed in accordance with, and subject to the limitations under, ~~the provisions of section 34-145(a), unless otherwise specifically provided.~~

~~A decision of the Code Enforcement Hearing Examiner may be appealed in accordance with the provisions set forth in section 2-420.~~

## CHAPTER 14 – ENVIRONMENT AND NATURAL RESOURCES

### ARTICLE III. – WELLFIELD PROTECTION

#### DIVISION 2. – ADMINISTRATION AND ENFORCEMENT

#### Sec. 14-255. - Appeals.

Staff note: Revise language to clarify appeal procedure. Add cross-reference to administrative code.

If the department ~~division~~ denies an exemption or the applicant disputes any final administrative ~~determination made by the division pursuant to this article~~, the applicant may file an appeal of the department's ~~division's~~ written decision in accordance with the procedures set forth for ~~appeals of administrative decisions in section 34-145(a), and in accordance with any county administrative codes adopted to implement the provisions of chapter 34~~ Administrative Code 2-6.

## CHAPTER 22 – HISTORIC PRESERVATION

### ARTICLE III. – DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES

#### DIVISION 2. - INCENTIVES

##### Sec. 22-174. - Relief from zoning regulations.

Staff note: Correct scrivener's error. Delete appeal-related language. Matters subject to appeal are addressed in Section 34-145.

The department of community development director may, by written administrative decision, approve any relief request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements, signs, docks, and other similar relief not related to a change in use of the property in question.

(1) Before granting relief, the director must find that:

- a. The relief will be in harmony with the general appearance and character of the community.
- b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
- c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.

(2) In granting any relief, the director may prescribe appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:

- a. Landscape materials, walls and fences as required buffering.
- b. Modifications of the orientation of any openings.
- c. Modifications of site arrangements.

~~The owner of a building, structure or site affected by the operation of this chapter and the decision of the director may appeal that decision in accord with section 34-145.~~

## CHAPTER 26 – MARINE FACILITIES, STRUCTURES, AND EQUIPMENT

### ARTICLE II. – DOCK AND SHORELINE STRUCTURES

#### DIVISION 2. – LOCATION AND DESIGN

##### **Sec. 26-71. - Docking facilities and boat ramps.**

Staff note: Correct scrivener's error. Delete appeal-related language. Matters subject to appeal are established in Section 34-145.

Docking facilities will be permitted in accordance with the following regulations:

*Subsections (a) through (c) remain unchanged.*

(d) *Setbacks.*

- (1) All multi-slip and marina docking facilities, except boat davits, in or adjacent to natural waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
- (2) All private single-family docking facilities in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
  - a. Marginal docks—No less than 10 feet.
  - b. All other docks—No less than 25 feet.
  - c. Boat lifts and mooring pilings—No less than 10 feet.
- (3) Side setback requirements can be reduced if:
  - a. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required or to a zero setback; and
  - b. Placement of the dock in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
- (4) The ~~director~~Director, in ~~his~~the Director's discretion, may permit administrative deviations from the setbacks required by this subsection if the facility is located as close to the required setback as possible and:
  - a. The width of the subject parcel is not wide enough to permit construction of a single-family docking facility, perpendicular to the shoreline at the midpoint of the shoreline property line, without a deviation; or

- b. Construction of the structure outside the setback area will not cause or will minimize damage to wetland vegetation or other environmental resources or will not cause greater damage than will occur if the deviation is not granted.

~~The director's decision under this subsection can be appealed through the procedure set forth in section 34-145(a) or the applicant may seek a variance in accordance with section 26-46.~~

- (5) All boat ramps must setback ten feet from all adjoining side lot and side riparian lines.

*Subsections (e) through (h) remain unchanged.*

**Sec. 26-80. - Transfer of (watercraft) slip credits (TSC).**

Staff note: relocate appeal-related language to chapter 34.

*Subsections (a) and (b) remain unchanged.*

~~(c) — *Appeal of director's decision.* Appeals from the decision of the director may be appealed to the Lee County Hearing Examiner in accord with the procedures set forth in chapter 34 for appeals of administrative decisions. The hearing examiner may grant the appeal only upon a finding that the applicable criteria in the Manatee Protection Plan have been met.~~

*Subsections (c) and (d) remain unchanged.*

## **CHAPTER 33 – PLANNING COMMUNITY REGULATIONS**

### **ARTICLE I. – IN GENERAL**

**~~Sec. 33-6. – Appeal.~~**

Staff note: Delete appeal-related language. Matters subject to appeal are located in Section 34-145.

~~Appeal of the application or interpretation of this chapter must be filed and processed in accord with section 34-145(a).~~

## **CHAPTER 34 – ZONING**

### **ARTICLE II. – ADMINISTRATION**

#### **DIVISION 4. – HEARING EXAMINER**

**Sec. 34-145. – Functions and authority.**

Staff note: Revise, update, and clarify HEX functions and authority for matters subject to appeal. Clarify matters subject to appeal and consolidate matters subject to appeal and limitations language from throughout LDC for ease of administration. Clarify the express authority of HEX based on appeal authority and separation of powers between appeals and code enforcement authority.

Committee comments: The LDCAC questioned whether there are any changes to the administrative appeals process. Staff noted that amended language does include some clarifications that are intended to reduce ambiguity with respect to the HEX's powers and duties as it relates to the administrative appeals process.

The Hearing Examiner is limited to the authority that is conferred by the following:

(a) *Appeals of Administrative Decisions.*

(1) *Authority.* The Hearing Examiner's authority to hear and decide appeals is limited to the following final, written decisions issued by the appropriate administrative official with the final decision-making authority:

- a. rejection of an application for a building or sign permit;
- b. denial of an application for a local development order or Mine Operations Permit under Chapters 10 or 12 of this Code;
- c. denial of an application for a use permit for a use specifically identified within the Use Activity Groups or the Zoning District Use Regulation Tables under Chapter 34 of this Code;
- d. decision made in the course of administering Chapter 2, Article VI of this Code;
- e. decision of the historic preservation board in accordance with section 22-42 of this Code;
- f. denial of an exemption or final administrative action under Chapter 14, Article III of this Code;
- g. decision pursuant to section 26-80 of this Code;
- h. unlawful sign determination provided under section 30-8(2) of this Code; and,
- i. requirement for submittal of additional information or documentation within the Request for Additional Information as part of a local development order or zoning application (including variances and special exceptions), limited to a determination as to whether the requested additional information is beyond the application submittal requirements under the Code or outside the authority of the County to require such additional information under the Code.



(2) *Final Decisions.* The decisions within subsection (a)(1) upon which the Hearing Examiner has authority to hear administrative appeals must be a final decision that was issued in writing by the appropriate administrative official with final decision-making authority to implement or enforce the applicable provision of this Code, including the County Manager, Lee County Director of Community Development, Zoning Manager, Development Services Manager, Building Official, or Director of Natural Resources. For purposes of this provision, the use of the individual titles does not include their designees.

(3) *Limitations on Authority.* If the requirements of subsection (a)(1) and (a)(2) are met, the authority to hear an appeal is further limited and the Hearing Examiner is not authorized to hear appeals based on:

- a. Challenges to the validity of County ordinances, regulations or actions of administrative officials under State or Federal Laws;
- b. Acts of administrative officials pursuant to the orders, resolutions, or directives of the Board;
- c. Ordinances, regulations, or provisions in this Code that provide a different appellate procedure;
- d. Challenges to a development order controlled by F.S. § 163.3215;
- e. Appeals requiring the interpretation of the Lee Plan, including but not limited to, the issuance of a denial due to inconsistency with the Lee Plan or the requirement for submittal of additional information or documentation based on requirements of the Lee Plan;
- f. Appeals that circumvent required procedures;
- g. Appeals that seek relief more appropriately addressed in an application for a variance, special exception, or rezoning; and,
- h. Appeals of a decision of the Historic Preservation Board will be limited to a determination of whether:
  - 1. The board afforded procedural due process,
  - 2. The board applied the correct law, and
  - 3. The record contains competent and substantial evidence to support the board's actions.

(4) *Time for filing Notice of Appeal.* Unless otherwise provided in the Code, ordinance, or resolution or other provision which creates the right of appeal, no person shall be entitled to appellate review of an appealable decision who fails to file a proper notice of appeal within 30 calendar days of the date the decision is issued. For appeals seeking review of requirements for submittal of additional information or documentation, the notice of appeal must be filed within 14 calendar days from the date the written Request for Additional Information was issued.

(5) *Standing to appeal.*

a. The Applicant may appeal an administrative action. Non-applicants do not have standing to appeal administrative actions to the Hearing Examiner, except in the context of actions arising out of the fire impact fee regulations.

b. Administrative appeals arising out of fire impact fee regulations:

1. The Fire District with jurisdiction over the property affected by the action appealed is a necessary party in the appeal.

2. A Fire District may appeal an administrative action under this section, but only if the action in conjunction with future actions that will necessarily flow from the decision appealed, will result in a cumulative reduction of impact fee revenues to the district exceeding \$25,000.00. The District's appeal must clearly explain how the action will produce the cumulative reduction in revenues. Any Disputes over whether the action falls within this subsection will be resolved by the Hearing Examiner before the appeal hearing.

3. This subsection does not authorize a Fire District to appeal permits or other administrative actions that fall within the scope of the existing exemption for Timberland and Tiburon DRI. Such appeals are prohibited.

(6) *Acceptance of the Appeal.* In determining whether to accept the Appeal and issue an Order to Show Cause, the Hearing Examiner must conclude all of the following:

a. The appeal was timely filed;

b. The Hearing Examiner has authority to hear the appeal under (a)(1) and that the appeal is not further limited under (a)(2);

c. The Hearing Examiner has authority to grant the relief sought;

d. The Appellant has standing to file the appeal;

e. The Notice of Appeal sufficiently states the alleged error and basis of the appeal, including the sections of this Code in which the decision does not comply;

f. The Appeal is not moot; and,

g. The Notice of Appeal meets the requirements of the Administrative Code.

(7) *Considerations.* The Hearing Examiner shall only consider evidence which was presented to the County Administrative Official at the time the decision was made, or legislative intent, in the event the provision is unclear or ambiguous. No issue, testimony, physical or documentary evidence may be raised or introduced at the hearing or within the Notice of Appeal which was not previously submitted to the County Staff, Administrative Official, or Board whose decision is being appealed.

(8) Relief Granted. The Relief that may be granted in an Administrative Appeal is limited as follows:

- a. The Hearing Examiner may:
  - 1. Reverse or affirm the decision;
  - 2. Remand the case back to County staff with instructions to consider additional competent substantial evidence or relevant Code provisions or requirements; or
  - 3. Where the Hearing Examiner has the authority to review decisions of a commission or board, the Hearing Examiner may only remand the matter to the applicable board or commission for further proceedings consistent with the Hearing Examiner's findings and conclusions of law.
- b. The Hearing Examiner may not grant relief that:
  - 1. Requires Board approval or authorization; or
  - 2. Requires approval through a public hearing under this Code or an Administrative Code.
- c. Before making a decision that the Administrative Official erred in the appealed action, the Hearing Examiner must find the administrative action was:
  - 1. Inconsistent with the applicable Code provision and review criteria;
  - 2. Inconsistent with the plain and ordinary meaning of the regulation; or
  - 3. If the regulation is unclear or ambiguous, inconsistent with the intent of the regulation.

(9) Judicial Review. Judicial review by the Circuit Court of a final decision of a Hearing Examiner may be had by filing a notice of appeal in accordance with applicable Appellate Rules. Parties to a fire impact fee regulation case may file a request to appeal a decision made by the Hearing Examiner under this section to the Board within 15 calendar days after the decision is rendered.

(10) Procedure. Appeals to the Hearing Examiner must be submitted in compliance with the Administrative Codes. Formal Rules of Evidence, Civil Procedure and Appellate Procedure do not apply.

~~(a) Appeals from administrative action.~~

~~(1) Authority.~~

- ~~a. The Hearing Examiner has authority to hear and decide appeals~~
- ~~b. The Hearing Examiner is not authorized to hear appeals based on:~~
  - ~~1. Acts of administrative officials pursuant to the orders, resolutions, or directives of the Board.~~

- ~~2. Ordinances, regulations, or provisions in this Code that provide a different appellate procedure.~~
  - ~~3. Zoning verification letters.~~
  - ~~4. Challenges to a development order controlled by F.S. § 163.3215.~~
  - ~~e. The Hearing Examiner may not consider appeals that circumvent required procedures. Specifically, the Hearing Examiner may not consider an appeal more appropriately addressed in an application for a variance, special exception, or rezoning.~~
  - ~~d. Where the Hearing Examiner has the authority to review decisions of a commission or board, the Hearing Examiner may only remand the matter to the applicable board or commission for further proceedings consistent with the Hearing Examiner's findings and conclusions of law.~~
  - ~~e. In other appeals:~~
    - ~~1. The Hearing Examiner may reverse, affirm or modify the decisions or actions of the administrative official.~~
    - ~~2. The Hearing Examiner may take the action the Hearing Examiner finds the administrative official should have taken. The Hearing Examiner has the power of the administrative official from whom the appeal is taken. The Hearing Examiner may only take an action the administrative official is authorized to take.~~
    - ~~3. The Hearing Examiner may not take an action that requires Board approval or authorization.~~
- ~~(2) Procedure. Appeals to the Hearing Examiner must be in compliance with the Administrative Codes.~~
- ~~(3) Standing to appeal:~~
- ~~a. The Applicant may appeal an administrative action. Non-applicants do not have standing to appeal administrative actions to the Hearing Examiner, except in the context of actions arising out of the fire impact fee regulations.~~
  - ~~b. With regard to administrative actions arising out of fire impact fee regulations:~~
    - ~~1. The Fire District with jurisdiction over the property affected by the action appealed is a necessary party in the appeal.~~
    - ~~2. A Fire District may appeal an administrative action under this section, but only if the action in conjunction with future actions that will necessarily flow from the decision appealed, will result in a cumulative reduction of impact fee revenues to the district exceeding \$25,000.00. The District's appeal must clearly explain how the action will produce the cumulative reduction in revenues. Any Disputes over whether the action falls within this subsection will be resolved by the Hearing Examiner before the appeal hearing.~~

3. ~~This subsection does not authorize a Fire District to appeal permits or other administrative actions that fall within the scope of the existing exemption for Timberland and Tiburon DRI. Such appeals are prohibited.~~

~~(4) *De novo or appellate proceedings.*~~

- a. ~~Appeals pursuant to section 22-42 (Historic Preservation Board decisions), or other provisions authorizing the Hearing Examiner to review decisions of a commission or board, will be limited to a determination of whether:~~
  1. ~~The board afforded procedural due process,~~
  2. ~~The board applied the correct law, and~~
  3. ~~The record contains competent and substantial evidence to support the board's actions.~~
- b. ~~All other appeals from administrative actions are de novo proceedings. The Parties may present evidence and testimony as to laws or facts supporting their position in the case.~~

~~(5) *Jurisdiction.* In determining whether to accept jurisdiction of the Appeal, the Hearing Examiner must conclude:~~

- a. ~~The appeal has been properly brought before the Hearing Examiner for a decision; and~~
- b. ~~The Notice of Appeal sufficiently states the alleged error made by the administrative official.~~

~~(6) *Considerations.* The Hearing Examiner must consider the competent substantial evidence from the:~~

- a. ~~Notice of Appeal,~~
- b. ~~Staff position statement, if provided, and~~
- c. ~~Testimony and materials from the Parties and other hearing participants.~~

~~(7) *Decision making.* Before making a decision that the administrative official erred in the appealed action, the Hearing Examiner must find the administrative action was:~~

- a. ~~Inconsistent with the applicable review criteria;~~
- b. ~~Inconsistent with the plain and ordinary meaning of the regulation; or~~
- c. ~~If the regulation is unclear or ambiguous, inconsistent with the intent of the regulation.~~

~~(8) *Review of decisions.* Parties to a fire impact fee regulation case may file a request to appeal a decision made by the Hearing Examiner under this section to the Board within 15 calendar days after the decision is rendered. Judicial reviews of final decisions of the Hearing Examiner on appeals of other administrative actions are to the circuit court.~~

*Subsections (b) through (e) remain unchanged.*

- (f) The Hearing Examiner is limited to the express authority granted within County regulations. ~~The Hearing Examiner may consider state, federal, or common law in the application of the County regulations.~~ The authority granted to the Hearing Examiner under this section is limited to the actions identified above. Under no circumstances shall the provisions of this section be construed to grant additional authority or expand upon authority granted to the Hearing Examiner. The powers and authority granted to the Hearing Examiner in Code Enforcement matters are separate and distinct from those granted herein.

## **ARTICLE IV. – PLANNED DEVELOPMENTS**

### **DIVISION 1. - GENERALLY**

#### **Sec. 34-341. - Employment of planned development designation.**

*Staff note: Delete antiquated section that aligned with past state statute regarding Developments of Regional Impact. This section no longer aligns with state statute or current Department practice.*

*Subsections (a) and (b) remain unchanged.*

~~(c) — Determination of Development of County Impact status.~~

~~(1) — Any owner applicant may apply for wishing a determination of the Development of County Impact status of his the applicant's property may apply to the Director and pay a fee to cover administrative costs.~~

~~(2) — Any development which is less than 80 percent of the thresholds listed in section 34-341(b)(1) is conclusively presumed not to be a Development of County Impact. Any development which is more than 80 percent but less than 100 percent of the appropriate threshold is rebuttably presumed not to be a Development of County Impact. Any development which is more than 100 percent but less than 120 percent of any threshold is rebuttably presumed to be a Development of County Impact. Any development which exceeds 120 percent of any threshold is conclusively presumed to be a Development of County Impact.~~

~~(3) The Director will consider the following items in determining the Development of County Impact status of a proposed rezoning or special exception:~~

~~a. The compatibility of the proposed zoning district with neighboring zoning districts and uses;~~

~~b. The impact of the proposed zoning change on existing and proposed transportation facilities;~~

~~c. The impact of the proposed zoning change on other urban services, as defined in the Lee Plan; and~~

~~d. The impact of the proposed zoning change on environmentally critical areas.~~

~~(4) For the purpose of determining whether a parcel is a Development of County Impact, all abutting parcels which are in common ownership or control may be identified and taken into account in both determining Development of County Impact status and estimating the impacts of any proposed development.~~

~~(5) The Director's decision is an administrative decision which may be appealed in accordance with the procedure in this article.~~

**Secs. ~~34-34134-342~~—34-370. - Reserved.**

## **ARTICLE VI. – DISTRICT REGULATIONS**

### **DIVISION 11. – REDEVELOPMENT OVERLAY DISTRICTS**

#### **SUBDIVISION I. – GENERAL REQUIREMENTS**

#### **Sec. 34-1082. - Overview of redevelopment overlay district regulations**

*Staff note: Delete appeal-related language. Appeal procedures and matters subject to appeal are addressed in Section 34-145.*

*Subsections (a) through (c) remain unchanged.*

(d) *Development approvals.* Once a landowner has elected to develop under a redevelopment overlay district's regulations, the Community Development Director, or designee, is authorized and required to determine whether each development request complies with the redevelopment overlay district's land development regulations. When a property owner submits a development request relying on the redevelopment overlay district regulations, a copy of the recorded document

reflecting the property owner's election to participate in the redevelopment overlay district must be provided.

*Subsections (1) through (5) remain unchanged.*

~~(6) Administrative decisions of the Director may be appealed in accordance with existing procedures for such appeals in this chapter.~~

*Subsection (e) remains unchanged.*



## ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS

### DIVISION 5. – ALCOHOLIC BEVERAGES

#### **Sec. 34-1264. - Sale or service for on-premises consumption.**

Staff note: Delete appeal-related language. Matters subject to appeal are located in Section 34-145.

*Subsections (a) through (h) remain unchanged.*

- (i) ~~Appeals. Appeals of the Director's decisions must be filed in accordance with the procedures set forth in this chapter.~~
- (ii) *Bottle clubs.*
  - (1) Bottle clubs operating under a valid special permit as of September 18, 1996, are nonconforming uses.
  - (2) No new bottle clubs will be allowed in any zoning district. This subsection supersedes and repeals any existing County regulations in conflict herewith

*Remainder of section unchanged.*

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 7: Participation of Hearing Examiner at Board of County Commissioner (BoCC) Hearings on Zoning Matters**

AMENDMENT SUMMARY

*Substantive amendment affecting LDC Section 34-231*

- Issue: Current LDC language does not allow the Hearing Examiner to provide testimony at BoCC hearings on zoning matters, which requires the applicant or staff to represent the position of the Hearing Examiner with respect to the contents of the Hearing Examiner recommendations.
- Solution: Amend the LDC to allow the Hearing Examiner to participate in hearings before the BoCC on zoning matters.
- Outcome: Allows the BoCC to question the Hearing Examiner regarding the content of the Hearing Examiner recommendation on zoning cases, thereby allowing for streamlining of zoning hearings before the BoCC.

**Sec. 34-231. Public participation.**

Committee comments:

- The LDCAC questioned whether the HEX is required to attend BoCC zoning hearings. The County Attorney clarified that attendance is not compulsory, but is on an as-needed basis.
- The LPA questioned why the HEX was not included as part of the list of permitted witnesses. Staff speculated as to the reason why the HEX was omitted.
- The LPA discussed whether limitations will be placed on the HEX regarding testimony before the BoCC. Staff clarified that the County Attorney will be tasked with assuring that testimony from the HEX is limited to the evidence and testimony presented at the HEX hearing.
- The LPA asked whether the applicant will be notified if HEX attendance is requested by the BoCC. Staff noted that the applicant will be notified consistent with DCD practice of open communication with applicants. The LPA recommended codifying mandatory applicant notification for when the HEX's attendance at a BoCC zoning hearing is requested by the BoCC. Staff recommends that codification of applicant notification occur through an amendment to Administrative Code 2-7.

*Subsection (a) remains unchanged.*

- (b) *Participation before Board; zoning matters.* At public hearings on zoning matters, only the Parties, the Hearing Examiners, and participants at the proceeding before the Hearing Examiner may address the Board. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, or legal counsel representing a Party or hearing participant. The testimony presented to the Board will be limited to:
- (1) Testimony presented to the Hearing Examiner.
  - (2) Presentation of the Hearing Examiner's recommendation.
  - (2)(3) Testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or

- (3) (4) Allegations that relevant new evidence has been discovered that was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner.

During the public hearing, the Board may question its staff, its attorneys, the Applicant/Appellant, the Hearing Examiner authoring the report, and the participants present about matters in the written report and record and points of law or procedure.

- (c) Participation before the Hearing Examiner will be in accordance with the Administrative Codes.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted 6-1 to find the proposed amendments consistent with the Lee Plan, with the condition that a requirement to notify the applicant of the BoCC request to the HEX to attend a BoCC zoning hearing be codified.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 8: Clarification of Language Prohibiting Unauthorized Communications**

**AMENDMENT SUMMARY**

*Clean-up amendment affecting LDC Section 2-191*

- Issue: Current LDC language does not allow County Commissioners to seek information from county staff prior to consideration of a zoning case by the Board of County Commissioners (BoCC).
- Solution: Amend the LDC to allow County Commissioners to have informational discussions with County Staff regarding zoning cases as needed.
- Outcome: Streamlines zoning hearings before the BoCC by allowing individual Commissioners to contact County staff in order to better understand the facts pertaining to a particular zoning case.

**Sec. 2-191. - Unauthorized communications.**

Committee comments:

- The LPA questioned whether communications between a County Commissioner and staff would be subject to disclosure. The County Attorney noted if the communication is written, then it is subject to disclosure. The County Attorney also provided a background of relevant case law, noting that all communications are considered ex-parte communications except as specifically exempted. This amendment would exempt staff communication from consideration as ex-parte communication.
- The LPA recommended revising subsection (b) to clarify that communications with individual commissioners, and not the Board of County Commissioners as a whole, is prohibited. This change has been made accordingly.

*Subsection (a) remains unchanged.*

(b) Unauthorized communications with a County Commissioner prohibited.

(1) ~~Unauthorized communication with a County Commissioner.~~ No person may communicate with an individual Commissioner or a Commissioner's assistant regarding the substance (non-procedural aspects) of a pending rezoning action or appeal that will be considered by the Board under sections [34-83](#)(b)(1) and (6), to include:

- a. Rezoning actions (conventional rezoning and planned developments);
- b. Development of regional impact applications;
- c. Special exceptions meeting the development of County impact thresholds;
- d. Special exceptions and variances to be decided in conjunction with a *zoning* request;

e. Code enforcement proceedings requiring a rezoning to achieve compliance; and

f. Reinstatement or extension of a master concept plan.

(2) This section does not prohibit the informational discussion of pending or proposed cases or appeals by and between a County Commissioner and any employee of the Board of County Commissioners.

(c) Unauthorized communication with a County Hearing Examiner prohibited.

(1) No person may communicate with a Hearing Examiner or the Hearing Examiner's staff regarding the substance (non-procedural aspects) of a pending rezoning action or appeal to be considered by the Hearing Examiner under sections [2-420](#) through [2-429](#), or [34-145](#). This prohibition includes communications on the substance of:

- a. Code enforcement proceedings;
- b. Rezoning actions (conventional rezoning and planned developments);
- c. Rehearings on remand from the Board;
- d. Developments of regional impact;
- e. Special exceptions;
- f. Variances; and
- g. Appeals brought from administrative decisions.

~~(3)~~(2) Limited communications to and from a Hearing Examiner. Under certain limited circumstances communication with a Hearing Examiner during the pendency of a *zoning* action, or other proceeding defined in [section 2-191](#)(2), is permitted as follows:

- a. Written communications specifically requested by the Hearing Examiner pursuant to an order or in compliance with [section 34-378](#) (24 hour rule).
- b. Advice from a disinterested expert. A Hearing Examiner may obtain the advice of a disinterested expert other than another County Hearing Examiner or employee of the County (except a member of the Hearing Examiner's staff) concerning a matter of law, planning or *zoning* applicable to a proceeding before the Hearing Examiner. A Hearing Examiner must give notice of the intention to solicit such an opinion to all interested parties who appeared at the public hearing personally, by agent or through counsel, or have filed documents or statements in the public record under consideration in the pending matter; forward copies of the written opinion received as a result of the request to each party; and afford all interested

parties reasonable opportunity to respond to and rebut the opinion on the record prior to rendering a decision.

~~(4)~~(3) This section does not prohibit the discussion of pending or proposed cases or appeals by and between the Hearing Examiners or between a Hearing Examiner and any employee of the office of the Hearing Examiner.

~~(e)~~(d) Penalties. Any person who intentionally makes or attempts to initiate an unauthorized communication to or with a Hearing Examiner, a member of the Hearing Examiner's staff, a County Commissioner or an assistant to a County Commissioner, or any Hearing Examiner or County Commissioner who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, may be subject to the following penalties:

(1) Criminal penalties. Such person may be subject to punishment as provided for in [section 1-5](#).

(2) Civil penalties. Such person may be subject to:

a. Revocation, suspension or amendment of any permit, variance, special exception or rezoning granted as a result of the Hearing Examiner action that is the subject of the unauthorized communication, and,

b. Any other relief available at law or in equity.

Each unauthorized communication or attempt to initiate an unauthorized communication constitutes a separate offense under the provisions of this section.

Committee votes:

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted 6-1 to find the proposed amendments consistent with the Lee Plan.

**BIENNIAL LDC AMENDMENT CYCLE (2021-2022)**  
**MATTERS CONCERNING HEARING EXAMINER**

**TOPIC 9: Clarification of language regarding administrative interpretations**

**AMENDMENT SUMMARY**

*Clean-up amendment affecting LDC Section 2-1*

- Issue: Current LDC language pertaining to administrative interpretations does not restrict third parties from filing requests for administrative interpretations for properties under separate ownership where such a request pertains to a specific piece of property.
- Solution: Amend LDC Section 2-1 to clarify that requests for interpretation regarding a specific piece of property may only be sought by the property owner or agent of the property in question.
- Outcome: Clarifies the LDC in a manner that reduces administrative time and expense with respect to processing administrative interpretations sought by third parties.

**Sec. 2-1. - Requests for an interpretation of a code provision.**

[Committee comments:](#) The LPA questioned whether the proposed amendments would prevent staff from responding to due diligence inquiries. Staff clarified that the zoning verification process and informal customer inquiries will remain available to provide due diligence information.

Where a question arises as to the meaning or intent of a section or subsection of this Code, a written request stating the area of concern and the explicit interpretation requested may be submitted to the director of the department of community development, on forms provided by the department. Requests for interpretation regarding a specific property may only be submitted by the owner or registered agent for the owner of the subject property.

*Subsections (1)-(3) remain unchanged.*

[Committee votes:](#)

- The LDCAC voted unanimously to recommend that the BoCC adopt the proposed amendments as written.
- The LPA voted unanimously to find the proposed amendments consistent with the Lee Plan.