



Guide to Public Participation

Addressing:
Hearing Examiner Process

**GUIDE TO PUBLIC PARTICIPATION
BEFORE THE HEARING EXAMINER
FOR SPECIAL EXCEPTIONS, VARIANCES,
AND REZONINGS**

Lee County employs two attorneys specializing in land use law to serve as Hearing Examiners. Part of their responsibility includes hearing testimony and evidence in appeals of administrative actions, applications for variances and special exceptions, and changes in the zoning designation of property.

In the case of variances and special exceptions, the Hearing Examiner renders a final decision. In the case of requests to rezone property, the Hearing Examiner makes a recommendation to the Board of County Commissioners. The Board may choose to follow or modify the Hearing Examiner's recommended action. The Hearing Examiner's recommendation or decision may also include conditions of approval.

Location: 1500 Monroe Street, Fort Myers, Florida, Hearing Room 219

Public Works/Department of Community Development Building
(Second floor and to your left when you exit the elevator)

Arrangement of Room:

See attached diagram of the Hearing Room (Exhibit A).

The Hearing Examiner sits at the front table. If present, the court reporter sits immediately to the left of the Hearing Examiner. Staff members sit to the Hearing Examiner's right. Directly in front of the Hearing Examiner is a podium where much of the testimony is given. Applicants and their representatives sit at the table next to the podium. Additional staff members sit in the first two rows behind the staff table. These seats may also be used by anyone with hearing difficulties. The remaining seats are available for the public.

The Hearing Room is equipped with a pull down screen and projector for presentations, with VGA and HDMI connections available.

Upon arrival, members of the public will be encouraged to complete a "Public Participation Form" (Exhibit B). The forms are located in the tray next to the side door of the hearing room. The forms must be completed by persons who intend to (1) place testimony or evidence into the record or (2) receive a copy of the Hearing Examiner's recommendation/decision.

Once completed, the form should be placed in the tray on the Hearing Examiner's table. Copies of the Hearing Examiner's recommendation/decision will be sent to the address provided on the form. Email is the preferred method of delivery.

Persons leaving the room during the hearing are encouraged to use the side door.

Swearing in:

First, the Hearing Examiner will administer an oath to persons intending to testify at the hearing, including members of the public.

Order of Proceeding:

1. Swearing in of witnesses;
2. Applicant's presentation and cross-examination of applicant's witnesses;
3. Staff's presentation and cross-examination of staff's witnesses;
4. Public comment and questions. Cross-examination of public participants;
5. Rebuttal by staff and applicant. Response to questions posed by public.
6. Hearing is closed.

Applicant's presentation:

The applicant seeking the zoning approval will make a presentation, explaining how the application meets the review criteria. This presentation may include testimony from expert witnesses. County staff and the Hearing Examiner may cross-examine each witness. Members of the public may pose questions during the public comment portion of the hearing.

Public remarks should be reserved until the public comment portion of the hearing.

Staff's presentation:

After the applicant presents the case in support of the application, Lee County staff will present the staff report. At the conclusion of the staff's presentation, the applicant and the Hearing Examiner may cross-examine County staff.

Public comment:

After staff presentation, the public will be invited to address the Hearing Examiner. Members of the public must speak at the podium. The Hearing Examiner may ask the public to indicate their residence or place of business in relation to the site under review on a large aerial map. Public comments should focus on the substance of the zoning request. The Hearing Examiner does not impose a time limitation on the length of public comment, but may refuse to hear testimony that is redundant, or irrelevant to the application. The applicant, County staff, and the Hearing Examiner may cross-examine members of the public.

Members of the public may state their position on the application, whether the application meets the County's review criteria,* ask questions and suggest conditions to address those concerns. Public comment is most effective when the speaker identifies specific areas of concern. It may be helpful for the speaker to prepare a brief outline of comments for the presentation. *(Note: the review criteria is attached hereto as Exhibit C)

Recommendation or Decision:

At the conclusion of the hearing, the Hearing Examiner will prepare a written recommendation to the Board on applications to rezone property. On applications for variances and special exceptions, the Hearing Examiner will render a final decision. All persons completing the "Public Participation Form" at the hearing will receive a copy of the recommendation/ decision.

The Hearing Examiner's recommendation/decision is public record. Once published, anyone may access a copy via the internet <https://www.leegov.com/hearingexaminer/search-rendered-decisions-recommendations>.

Representing Another Member of the Public:

Members of the public speaking on behalf of others must identify who they represent. The speaker will receive the copy of the recommendation/decision.

Who May Address the Board at the Final Hearing:

The Board will hear the zoning cases after the Hearing Examiner issues a recommendation. Members of the public may address the Board if they spoke on the record before the Hearing Examiner. A neighbor reading a written statement into the Hearing Examiner record on behalf of another member of the public will not qualify the author to address the Board. Persons who only submit written statements may not speak at the final hearing before the Board, unless they also spoke at the public hearing at the Hearing Examiner level.

Ex Parte:

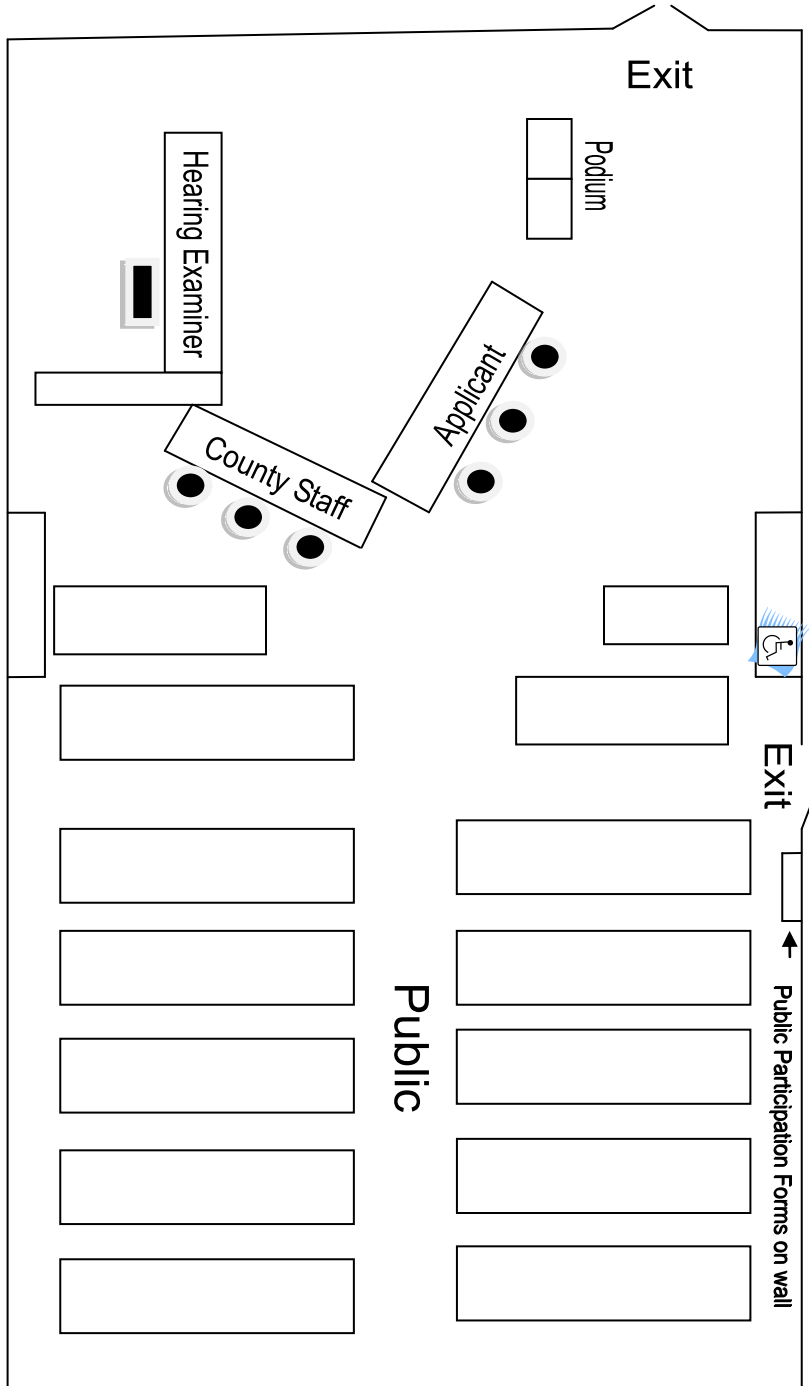
Lee County regulations prohibit *ex parte* communications with the Hearing Examiners or their staff on pending zoning applications. This means it is a violation of County regulations to contact the Hearing Examiner outside a public hearing on pending cases.

Review of Final Decisions:

The Board does not typically review final decisions of the Hearing Examiner on applications for variances and special exceptions. If challenged, these decisions may be reviewed by the Circuit Court. The only exception to this procedure is in cases involving requests for wireless communication towers.

Exhibit A

Hearing Room



Last revised November 4, 2015

Exhibit B

**THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

PUBLIC PARTICIPATION FORM

(Please Print Legibly)

CASE NAME: _____

PARTICIPANT NAME(S): _____

EMAIL ADDRESS: _____

ELECTRONIC COPY OF THE HEARING EXAMINER RECOMMENDATION/DECISION WILL BE SENT TO THE EMAIL ADDRESS UNLESS NONE PROVIDED. Please note that by providing an email address, you will also receive notice of the final Board of County Commissioners hearing via email.

RECOMMENDATION/DECISION will be posted online at www.leegov.com/hearingexaminer/search-rendered-decisions-recommendations

IF EMAIL ADDRESS NOT AVAILABLE:

Participant Mailing Address: _____

(city) (state) (zip code)

IMPORTANT NOTICE

MEMBERS OF THE PUBLIC MUST SPEAK BEFORE THE HEARING EXAMINER IN ORDER TO SPEAK AT THE BOARD OF COUNTY COMMISSIONERS' MEETING ON THIS CASE.

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YOU MAY TEAR THE BOTTOM OF THIS PAGE FOR WEBSITE INFORMATION

RECOMMENDATION/DECISION will be posted online at www.leegov.com/hearingexaminer/search-rendered-decisions-recommendations

Exhibit C

Review Criteria

Variations

The evidence must show the following review criteria have been satisfied:

1. The property has inherent exceptional conditions that cause the regulation to create a hardship (an unreasonable burden that is unique to a parcel of property) on the property owner,
2. The exceptional conditions are not the result of the property owner's actions after the adoption of the ordinance,
3. The variance granted is the minimum variance necessary to relieve the unreasonable burden,
4. Granting the variance will not be injurious to the neighborhood or detrimental to the public welfare, and
5. The variance is consistent with the Lee Plan.

Additional review criteria applies for certain variations as follows:

1. Wireless communication facilities:
 - a. Denial would have the effect of prohibiting personal wireless services;
 - b. Denial would unreasonably discriminate among providers of functionally equivalent personal wireless services;
 - c. The variance is necessary to ensure adequate public safety and emergency management communications;
 - d. The variance is the minimum necessary for the applicant to provide broadcast services pursuant to an FCC-issued license or construction permit (an FCC license requiring a broadcast antenna at a given height satisfies the requirement);
 - e. Denial would have the effect of prohibiting amateur radio services; or
 - f. The variance will obviate the need for additional antenna-supporting structures in the geographic search area.
2. Airport Compatibility District regulations: The variance can be accommodated in the navigable airspace without adverse impacts to the aviation operations of SWFIA or Page Field.
3. Variations from Land Development Code Chapter 10 (Development Standards): The variance will not create an undue burden on essential public facilities.
4. Dock and Shoreline Structures: The variance is consistent with the Manatee Protection Plan.

Special Exceptions

The evidence must show the Special Exception:

1. Is consistent with the goals, objectives, policies and intent of the Lee Plan;
2. Will protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;
3. Will be compatible with existing and planned uses;
4. Will not be injurious to the neighborhood or detrimental to the public welfare; and,
5. Will be in compliance with zoning regulations pertaining to the use and other applicable regulations.

In cases for new antenna supporting structure wireless communication facilities, the Hearing Examiner must also include each of the following special findings in the decision, unless the special findings are not applicable:

1. The applicant is not able to use existing wireless communications facility sites in the geographic search area.
2. The applicant will rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers.
3. The proposed antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources.
4. The applicant will to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.

Rezoning

The evidence must show the request:

1. Complies with the Lee Plan;
2. Meets the Land Development Code and other County regulations or qualifies for deviations from the regulations;
3. Is compatible with existing and planned uses in the surrounding area;
4. Will provide sufficient access to support the proposed development and the impacts on transportation facilities will be mitigated through County regulations or conditions of approval;
5. Will not adversely affect environmentally critical or sensitive areas and natural resources; and
6. Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

Planned Development Zoning Requests

The evidence must also show:

1. The proposed use or mix of uses is appropriate at the proposed location;

2. The recommended conditions provide sufficient safeguards to the public interest and reasonably relate to the impacts on the public's interest expected from the proposed development.
3. If the application includes deviations, that each requested deviation:
 - a. Enhances the achievement of the objectives of the planned development; and
 - b. Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.
4. Mine excavation planned development – The request meets the following:
 - a. 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.
 - b. The Applicant has given special consideration to the protection of surrounding private and publicly owned conservation and preservation lands.
 - c. Approval of the request:
 - (1) 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 and off-site during and upon completion of the mining operations;
 - (2) Will serve to preserve, restore and enhance natural flowways deemed important for local or regional water resource management;
 - (3) Preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible; and
 - (4) Provides interconnection to off-site preserve areas and conservation lands via indigenous preservation areas, flowway preservation or restoration, and planted buffer areas.
 - d. The site is designed to:
 - (1) Avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area;
 - (2) Avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources; and
 - (3) Mimic or restore the natural system pre-disturbed water budget to the maximum extent practicable.
 - e. Traffic mitigation standards of LDC Chapter 12.
 - f. Reclamation standards of LDC Chapter 12.

Environmentally Critical District Zoning Requests

The evidence must also show that rezoning to the EC district is necessary to prevent public harm or meet a public need.

Bonus Density Requests

The evidence must show the request is consistent with the terms of the draft contract agreement and the following requirements:

1. The request:
 - a. Complies with and is consistent with the Lee Plan and other applicable federal, state and regional laws and regulations;
 - b. Only includes property zoned for the type of dwelling units to be constructed; and

- c. Limits density to the total density allowed by the Lee Plan future land use category.
- 2. The proposed development is designed so that:
 - a. The resulting development does not have substantially increased intensities of land uses along the perimeter, unless the project is adjacent to existing or approved development of a similar intensity;
 - b. The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;
 - c. Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
 - d. There will be no decrease in required open space, buffering, landscaping and preservation areas or adverse impacts on surrounding land uses;
 - e. If the development is located within the Category 1 Storm Surge Zone for a land-falling storm, the developer will provide storm shelters or other appropriate mitigation; and
 - f. The resulting development will be compatible with existing and planned surrounding land uses.

Denials

The Hearing Examiner may recommend denial of a rezoning request that complies with the review criteria if the evidence shows maintaining the existing zoning designation accomplishes a legitimate public purpose and is not arbitrary, discriminatory, or unreasonable.

Last revised November 9, 2016