

LAND USE APPEALS BOARD
RULES OF ORDER

Adopted April 7, 2006

PURPOSE AND AUTHORITY

The Hillsborough County Land Use Appeals Board (the "Board") is created by the Hillsborough County Land Development Code ("LDC"). The purpose of the Board is to hear appeals of proceedings held before the Land Use Hearing Officer. Decisions of the Board shall be rendered at the conclusion of each hearing and shall be subsequently set forth in a written order. Final decisions of the Board may be challenged by any person or entity with standing in any manner authorized by state law.

GENERAL POLICIES

As an appellate body, the Board shall only consider the record of the proceedings before the Land Use Hearing Officer. No additional evidence may be submitted to or considered by Board members. Ex-parte communications shall also not be considered by Board members. All meetings of the Board shall be held in accordance with Chapter 286.011, Florida Statutes ("The Sunshine Law"). Except where provided by these Rules or the LDC, Robert's Rules of Order shall apply.

MEMBERSHIP

1. The Board shall have seven members. Board members shall be appointed by the County Commission. The County Commission may appoint up to two alternate members to the Board to serve in the absence of a Board member or members. Alternate members must qualify for membership upon the same terms and conditions of regular Board members.

2. Initial appointments shall be as follows: two members shall be appointed for a term of one year, two members shall be appointed for a term of two years, two members shall be appointed for a term of three years, and one member shall be appointed for a term of four years. Thereafter, each member shall be appointed to a three (3) year term.

3. A member may be reappointed for a second consecutive term, but, after two consecutive terms, a member shall not be eligible for reappointment until one calendar year has elapsed from the date of termination of the second term.

4. Each member shall reside in the unincorporated area of Hillsborough County.

5. When a position becomes vacant during an unexpired term, the County Commission shall appoint a replacement to fill the vacancy for the duration of the vacated term. A member whose term has expired may continue to serve until a successor is appointed and qualified.

6. Membership shall consist of representatives from the following categories. No more than two persons shall be appointed from any one category.

a. An attorney admitted to The Florida Bar practicing in Hillsborough County with at least five years of experience;

b. A landscape architect or architect registered to practice in the State of Florida;

c. A business owner or operator in unincorporated Hillsborough County;

d. A professional planner with not less than three years of experience in land use planning or zoning in Hillsborough County;

e. A civil or environmental engineer registered to practice in Florida;

f. A member of a civic or neighborhood organization in unincorporated Hillsborough County;

g. Developer active in development in Hillsborough County or a duly licensed general contractor (Class A) active in business in Hillsborough County.

7. The Board shall meet at least once each calendar month, unless canceled by the Board or the Chair, and more often at the call of the Chair or the County Commission. All meetings shall be open to the public.

8. Four members shall constitute a quorum.

9. Each decision of the Board must be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting.

10. The Board shall keep minutes of its proceedings, indicating the attendance of each member, a complete summary of the evidence submitted to it, documents submitted to it and all official actions. A recording shall be made of

all proceedings. The recording shall be maintained by the Clerk to County Commission.

11. No member shall participate in any proceeding before the Board where the member, the member's immediate family or any business associate of the member has a financial interest in the land or structure involved in the proceeding.

12. If any member fails to attend three (3) successive meetings the Board shall declare the member's office vacant and notify the County Commission. Members may be removed for reasonable cause by a majority vote of the County Commission after fair and adequate written notice to the member and a public hearing.

OFFICERS

1. At the first meeting of each calendar year, the Board shall elect a Chair and a Vice Chair whose terms shall commence with that meeting. The Chair shall conduct the meetings and serve as the spokesperson for the Board. The Vice Chair shall fulfill the Chair's duties in the absence of the Chair. In the event the office of Chair or Vice Chair becomes vacant, a new Chair or Vice Chair shall be elected.

2. The Chair may not make a motion unless the Chair yields the gavel to the Vice Chair or, in the absence of the Vice Chair; the Chair yields the gavel to another Board member.

3. In the absence of both the Chair and Vice Chair, the remaining members shall elect a member to serve as Chair.

STANDING TO APPEAL

1. The following shall have standing to appeal a decision of the Land Use Hearing Officer, or to intervene in an appeal before the Board:

a. An applicant who is adversely affected by the Land Use Hearing Officer's decision; or

b. Any person or entity who:

(i) Was present at the hearing before the Land Use Hearing Officer and presented either oral testimony or documentary evidence; or

(ii) Submitted documentary evidence themselves or by proxy prior to or during the Land Use Hearing Officer hearing, and

(iii) Is adversely affected by the Land Use Hearing Officer's decision.

The Board shall determine whether a person or entity has standing to appeal or intervene in an appeal at the appeal hearing.

NOTICE OF APPEAL

1. A Notice of Appeal of a decision shall be filed within thirty (30) calendar days of the date on which the Land Use Hearing Officer renders a written decision.

2. The Notice of Appeal shall be filed with the Administrator and shall set forth the basis for the appeal.

3. The Administrator shall schedule the matter before the next regularly scheduled meeting of the Board that is at least twenty (20) days from the date the Notice of Appeal was filed.

4. Notice of the filing of a Notice of Appeal and the setting of the matter before the Board shall be mailed to all parties of record by the appellant(s) in the hearing before the Land Use Hearing Officer no less than twenty (20) days prior to the hearing date. This notice shall include the time, date and location of the meeting. The appellant shall provide proof of mailing of the hearing notice to the Office of Citizen Boards Support at least five (5) calendar days prior to the hearing date.

CONTINUANCES

1. One continuance shall be granted to the appellant and/or property owner, whichever requested the continuance, if the continuance request is filed with the administrative office of the Board at least fourteen (14) calendar days or more before the scheduled Board hearing date.

2. The appellant and/or property owner shall send the notice of continuance by proof of mailing to all parties of record at least eleven (11) calendar days in advance of the scheduled Board hearing and shall submit proof of mailing to the Board's administrative office at least five (5) calendar days prior to the hearing date. This notification shall include the new time, date, and location of the meeting.

3. If the criteria for granting a continuance set forth in Paragraph 1. in this section are not satisfied, the continuance request shall be considered by the Board at the meeting when the petition was scheduled for hearing.

4. The Board, at its discretion may continue a petition at a Board meeting without notice for unique circumstances.

RECORD ON APPEAL

1. The Board shall review the record on appeal. The record of appeal shall consist of:

- a. The application and accompanying documents.
- b. Staff reports and recommendations.
- c. All exhibits and documentary evidence.
- d. The summary, findings, conclusions, and recommendation of the Land Use Hearing Officer.
- e. The taped recording of testimony at the hearing.
- f. Verbatim transcript of the proceedings.
- g. Applicable official Zoning Atlas sheets.

2. In addition to the record on appeal, the Board and participants in the hearing may freely refer to the following:

- a. Applicable portions of the Hillsborough County Comprehensive Plan, the Hillsborough County Land Development Code, and any other duly adopted Hillsborough County ordinance, rule or resolution.
- b. Any state or federal statute, rule, or decision.

ORAL ARGUMENT

1. The Board shall hear oral argument by the Administrator, the appellant(s), intervenor(s), each of whom may be represented by legal counsel. The Board shall also hear oral argument by parties of record.

2. All speakers shall identify themselves and give their address prior to speaking.

3. All testimony shall be under oath. The person acting as Chair of a board is authorized to administer oaths.

4. The order of presentation shall be as follows:

- a. Staff introduction.
- b. Petitioner's case.
- c. Opposition.
- d. Rebuttal by Petitioner.

5. The Board reserves the right to limit testimony presented by applicants and opponents to ten (10) minutes for each side. Such time limit may be extended for good cause. Any time limit imposed shall be announced by the Chair before the beginning of the hearing(s) on the application(s) that will be subject to the limitations.

6. The Board reserves the right to pose questions of staff, petitioner, and opposition at any time.

7. Any party appearing before the board shall be entitled to have a stenographer or court reporter make a record of the proceedings.

8. The person acting as Chair is authorized to compel the attendance of witnesses.

DECISIONS

1. The Board shall have the authority to uphold the Land Use Hearing Officer's decision, to remand the case back to the Land Use Hearing Officer or to overturn the Land Use Hearing Officer's decision.

2. If the Board remands a case back to the Land Use Hearing Officer, the Board shall specify the reason for the remand and specify the issues for the Land Use Hearing Officer to address.

3. The Board may overturn the decision of the Land Use Hearing Officer only if all of the following criteria have been met:

a. The case has been remanded one time by the Board to the Land Use Hearing Officer; and

b. Based upon the record on appeal, if the Board finds that one or more of the official findings of fact and the conclusions of law as found in the decision of the Land Use Hearing Officer is unsupported by competent and substantial evidence in the record or if the essential requirements of the law have not been followed; and

c. A supermajority of five (5) Board members vote to overturn the decision of the Land Use Hearing Officer.

4. If the Board overturns the decision of the Land Use Hearing Officer, the Board must make findings of fact and conclusions of law. The Board may accept, reject or modify the Land Use Hearing Officer's findings of fact and conclusions of law in making the final decision. In addition, the Board may impose reasonable conditions on the permit request, if granting the request.

AMENDMENTS

These Rules may be amended by Board at any Board meeting.

CONFLICT WITH LAW

The policies and procedures of the Board, as outlined above, are supplemental to the provision(s) of any applicable law, ordinance, and/or regulation. When the provision(s) of any law, ordinance, and/or regulation are in conflict with the policies and procedures outlined above, the provision(s) of that law, ordinance, and/or regulation shall govern.

LDC References:

ARTICLE IX Part 9.03.00 Citizens Boards

-Sec. 9.03.01 Generally

-Sec. 9.03.02 Land Use Appeals Board

ARTICLE X Part 10.05.00 Appeals

-Sec. 10.05.02. From Land Use Hearing Officer to Land Use Appeals Board.

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