

Sec. 10-7.403. Type A review.

Type A review shall be applied to those types of site and development plans listed in Table 10-7.1. For the purposes of this section, nonresidential site and development plans include but are not limited to certain commercial, office, institutional, and/or industrial development.

Review requirements.

(a)

Preapplication: The applicant shall obtain a permitted use verification, as applicable, prior to filing a Type A site and development plan application. A preapplication meeting with staff shall be scheduled by the applicant. Interested parties are permitted to attend and participate in the preapplication meeting. Public notice shall be mailed at least five calendar days in advance of the preapplication meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner within 600 feet of the project and to neighborhood and business associations.

(b)

Application: The applicant shall submit the required site and development plan to the county administrator or designee. The applicant shall select the proposed project's development review track from the options outlined in [section 10-7.402](#) 5., and proceed accordingly.

(c)

Determination of completeness: Within 14 calendar days after receipt of the application for site and development plan approval, the county administrator or designee shall determine whether the application contains all required information set out in [section 10-7.402](#) 8. at the required level of detail, and shall advise the

applicant of all areas of deficiency. This notification shall specify any additional information and level of detail required in order to meet the requirements of this section. In the event that an applicant fails to submit the required additional information within 30 calendar days of the date of the notice of deficiency, the county administrator or designee shall consider the application to be withdrawn. The county administrator or designee may grant extensions of up to 30 days at the request of the applicant; provided any such request for an extension is received prior to the expiration of the relevant time period.

(d)

Public notice. Public notice of the Type A application consistent with the provisions of section 125.66(4)(b)2. and 3. shall be published within seven calendar days of receipt of application. Notice of the application must be prominently posted at the job site. Notice of the application must clearly delineate that an aggrieved or adversely affected person has the right to request a quasi-judicial hearing before a special master, must explain the conditions precedent to the appeal of any development order rendered on the application, and must specify where written procedures can be obtained that describe the process to appeal the decision of the county.

(e)

Review at application review meeting and decision by county administrator. The application review committee shall review the application for compliance with applicable regulations; and, if necessary, receive input from any appropriate agencies. The application review committee shall render a written recommendation to the county administrator or designee recommending approving, approving with conditions, or denying

the application. The county administrator or designee shall render a written preliminary decision within 14 calendar days from the date that the application is determined complete, pursuant to subsection (c) above. Within five calendar days of the decision, notice of the written preliminary decision shall be provided to the applicant and persons who submitted written comments, provided the person's mailing address is readily ascertainable on the face of the written comments provided.

(f)

Approval subject to conditions. Subsequent to the action of the county administrator or designee to approve a Type A site and development plan subject to conditions, the applicant shall furnish for review and verification by the county administrator or designee, a revised site and development plan application, demonstrating compliance with all conditions. The revised site and development plan shall be submitted to the county administrator or designee within 90 days of the date of approval entity's action; however, the applicant may, upon demonstration of good faith effort and hardship that is not self-created, be granted a 90-day extension by the county administrator or designee. Subsequent 90-day extensions may be requested and granted, based on the same criteria. Failure to comply with these time limits shall render the site and development plan application approval expired.

(g)

Notice of the application review meeting. Public notice of the application review meeting shall be mailed at least seven calendar days in advance of the meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner whose property is located within

600 feet of the project and to registered homeowners associations and business associations of property within 600 feet of the project. The public notice shall advise such persons of the application, and specify that input and comments regarding the application should be sent to the department of development support and environmental management. The public notice shall advise that the application will be reviewed by staff at a public application review meeting and provide the date, time, and place of that meeting. The public notice shall advise that the application will be subject to administrative review and not subject to quasi-judicial provisions. The notice must also include a statement that, as a condition precedent to filing an appeal, one must submit written comments regarding the application to the department of development support and environmental management prior to the adjournment of the application review meeting at which the written preliminary decision on the development application is made. Required notices may be provided in combination with other notices.

(h)

Appeals. The decision of the county administrator or designee shall become final 15 calendar days after it is rendered unless an applicant or a person who qualifies as a party, as defined in [section 10-7.414](#) has filed written comments with the department of development support and environmental management prior to the adjournment of the meeting at which the decision was rendered, files a notice of intent to file an appeal of a decision on a site and development plan application. Subsequent to the filing of a notice of intent, a **petition** must be filed within 30 calendar days from the date of rendition of the decision. **Petitions** shall be made in

writing and filed at the department of development support and environmental management, and shall include the project name, application number, a description of the facts upon which the decision is challenged, all allegations of inconsistency with the Comprehensive Plan and land development regulations, and any argument in support thereof. Failure to file both a notice and intent or a **petition** is jurisdictional and will result in a waiver of the hearing. Appeals heard by a special master will be conducted in accordance with the procedures outlined in section[s] 10-7.414 and 10-7.415

(Ord. No. 07-20, § 2, 7-10-07; Ord. No. 08-03, § 17, 1-29-08; Ord. No. 08-23, § 4, 11-25-08; Ord. No. 10-28, § 2, 10-12-10; Ord. No. 11-01, § 2, 1-18-11; Ord. No. 11-23, § 1, 10-11-11)

Sec. 10-7.414. Procedures for quasi-judicial hearings before a special master.

(A)

Appointment of a special master. From time to time the Board of County Commissioners shall appoint and retain special masters or shall contract with the Florida Division of Administrative Hearings for administrative law judges to conduct quasi-judicial proceedings regarding site and development plan applications. Each special master shall be a licensed attorney with the Florida Bar who has practiced law in Florida for at least five years, and who has experience in land use law, real estate law, local governmental law, or administrative law. None of the special masters or the law firms with which they may be associated shall be representing clients before any agency of the county government or any agency of any municipality in the county during the period in which they serve as special master.

(B)

Term, compensation. Each special master appointed and retained by the Board of County Commissioners shall serve at the pleasure of the board and shall be compensated at a rate or rates to be fixed by the board.

(C)

Ex parte communication.

(i)

No county employee, elected official, or other person who is or may become a party to a proceeding before a special master shall engage in an ex parte communication with the special master. However, the foregoing does not prohibit discussions between the special master and county staff that pertain solely to scheduling and other administrative matters unrelated to the merits of the matter before the special master.

(ii)

If a person engages in an ex parte communication with the special master, the special master shall place on the record of the

pending case all ex parte written communications received, all written responses to such communications, a memorandum stating the substance of all oral communications received and all oral responses made, and shall provide the memorandum to all parties and advise all parties that such matters have been placed on the record. Any party desiring to rebut the ex parte communication shall be entitled to do so, but only if such party requests the opportunity for rebuttal within ten days after receipt of notice of such communication. If the special master deems it necessary due to the effect of an ex parte communication, the special master may withdraw from the case.

(iii)

After the filing of a notice of intent, no party to the hearing may engage in any ex parte communication with a member of the Board of County Commissioners regarding the pending application for site and development plan or the issues in the pending hearing.

(D)

Prohibition from acting as agent or attorney for subject matter. A special master, and any firm with which he or she is or may become associated, is prohibited for a period of three years, after issuance of the decision on the application which was the subject of a quasi-judicial hearing in which he or she presided, from acting as an agent or attorney on any matter involving property which was the subject of the proceeding in which the special master hearing officer presided. Violations of this subsection shall be prosecuted in the manner provided by general law.

(E)

Timeliness of requests for quasi-judicial hearings and standing determinations. All determinations on the timeliness of notices of intent and petitions and all determinations of standing will be made by the special master.

- (F) *Standing.* Parties to the proceedings shall be limited to the county, the applicant, and any aggrieved or adversely affected person who has timely filed both a notice of appeal and a petition to challenge a development order. The term "aggrieved or adversely affected party" shall mean any person or local government that will suffer an adverse effect to an interest protected or furthered by the local government Comprehensive Plan, including interests related to health and safety, police and fire protection service systems, densities or intensities of development, health care facilities, equipment or services, and environment or natural resources. The alleged adverse interest may be shared in common with other members of the community at large but must exceed in degree the general interest in community good shared by all persons.
- (G) *Powers of special masters.* The special masters who conduct quasi-judicial proceedings pursuant to this section shall have the powers of special masters enumerated in F.S. § 120.569(2)(f), as well as to issue other orders regarding the conduct of the proceedings and the power to compel entry upon the land that is subject to the application at issue.
- (H) *Mediation.* Parties are encouraged to agree to formal mediation when an appeal is filed pursuant to this article. If agreed upon, mediation shall be completed within 45 calendar days of the filing of the petition, unless extended by stipulation of the parties to the appeal. Such mediation shall be conducted in accordance with the Florida Rules of Civil Procedures regarding mediation, and the county appellate proceedings shall run concurrent with mediation.
- (I) *Prehearing requirements.* At least seven days prior to the date set for the hearing, the parties shall exchange a list of names and addresses of witnesses planned to

testify at the hearing, and a list of exhibits planned to be introduced at the hearing, as well as produce the physical exhibits for inspection by the parties. Each party is entitled to depose witnesses scheduled to testify at the final hearing.

(J)

Hearings.

(i)

All hearings shall be commenced within 60 calendar days of the date the petition was filed. Requests for continuance by any party, either before or during the hearing, may be considered and granted upon good cause shown.

(ii)

All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 15 calendar days to the date of the hearing.

(iii)

The participants before the special master shall be the applicant, the applicant's witnesses, if any, county staff, and other parties as the term "party" is defined in this section, and witnesses of the parties, if any, and members of the public desiring to enter comments pursuant to subparagraph (v)d. of this section. Any party who is not the applicant or county staff who participates at the hearing shall provide his or her mailing address to the special master.

(iv)

Testimony and evidence shall be limited to matters directly relating to the application and development. Irrelevant, immaterial or unduly repetitious testimony or evidence may be excluded.

(v)

All testimony shall be under oath. The order of presentation of testimony and evidence shall be as follows:

a.

The party challenging the DRC's written preliminary recommendation and his or her witnesses, if any.

b.

The applicant, if not the party challenging the DRC's written preliminary decision, and the applicant's witnesses, if any.

c.

The county, and its witnesses, if any, including county staff.

d.

Comments by members of the public, if any.

(vi)

To the maximum extent practicable, the hearings shall be informal. All parties shall have the opportunity to respond, to present evidence and argument on all issues involved which are related to the development order, and to conduct cross-examination and submit rebuttal evidence. During cross examination of witnesses, questioning shall be confined as closely as possible to the scope of direct testimony. The special master may call and question witnesses or request additional evidence as he or she deems necessary and appropriate. To that end, if during the hearing the special master believes that any facts, claims, or allegations necessitate review and response by any party or parties, then the special master may order the hearing continued until a date certain, but no longer than 15 days after the start of the hearing. The special master shall decide all questions of procedure and standing.

(vii)

The standard of review applied by the special master in determining whether a proposed development order is consistent with the Comprehensive Plan shall be strict scrutiny in accordance with Florida law. The standard of

review to determine whether the proposed development order is consistent with applicable Land Development Regulations shall be in accordance with Florida law.

(viii)

The special master shall render a recommended order on the application to the Board of County Commissioners within 30 calendar days after the hearing concludes, unless the parties waive the time requirement. The recommended order shall contain written findings of fact, conclusions of law, and a recommendation to approve, approve with conditions, or deny the application. A copy of the recommended order shall be served on all parties and any member of the public who participated at the hearing. Service of copies may be made by electronic communication.

(K)

[Exceptions.] The parties shall have ten calendar days from the date of the recommended order is served to file specific, written exceptions to the recommended order with the clerk of the Board of County Commissioners. Exceptions shall include appropriate references to the record before the special master.

(L)

Action by Board of County Commissioners. Upon receipt of the special master's recommended order, the board shall take up the matter pursuant to [section 10-7.415](#) of this Code.

(Ord. No. 07-20, § 2, 7-10-07; Ord. No. 11-01, § 5, 1-18-11; Ord. No. 11-23, § 5, 10-11-11)

Editor's note—

Section 5 of Ord. No. 11-23, adopted Oct. 11, 2011, changed the title of [§ 10-7.414](#) from "Procedures for hearings before a special master" to "Procedures for quasi-judicial hearings before a special master."

Sec. 10-7.415. Board of County Commissioners review.

- (A) The provisions of this section apply to hearings before the Board of County Commissioners to review the recommended order of a special master following a quasi-judicial hearing on a site and development plan application, pursuant to [section 10-7.414](#) of this Code.
- (B) After the receipt of a notice of intent to file an appeal of a decision on a site and development plan application, no person may communicate with any commissioner regarding the case except on the record at the hearing held pursuant to this section.
- (C) All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 14 calendar days prior to the date of the hearing. Public comment on the recommended order shall be taken prior to the argument by the parties pursuant to subsection (G). Public comment shall be limited to three minutes per person.
- (D) The hearing by the Board of County Commissioners will commence no later than 30 calendar days from the date of receipt of the recommended order and record of the decision being reviewed.
- (E) The record before the Board of County Commissioners shall consist of the complete record of the proceedings before the special master or hearing officer. The hearing before the board shall be limited to matters of record, and arguments based on the record. No new evidence shall be presented to the board at the hearing.
- (F) The participants before the Board of County Commissioners shall be the parties who participated at the hearing before the special master or hearing officer, and members of the public wishing to provide comment.
- (G)

All parties, as that term is defined in [section 10-7.414](#) of this Code, who participated at the hearing before the special master or hearing officer, shall be limited to a total of 20 minutes to present his or her argument, as shall the county staff. For good cause shown the chairman may grant additional time.

(H)

At the conclusion of the hearing, the Board of County Commissioners shall render a decision approving, approving with conditions, or denying the application for site and development plan. The board is bound by the special master's findings of fact unless the findings of fact are not supported by competent substantial evidence in the record before the special master. The board may modify the conclusions of law if it finds that the special master's application or interpretation of law is erroneous. The board may make reasonable legal interpretations of its Comprehensive Plan and land development regulations without regard to whether the special master's interpretation is labeled as a finding of fact or a conclusion of law. The board's final decision must be reduced to writing, including the findings of fact and conclusions of law, and is not considered rendered or final until officially date-stamped by the clerk of the Board of County Commissioners.

(I)

Judicial review. The sole method by which an aggrieved or adversely affected party may challenge the decision of the board is by an appeal filed by a petition for writ of certiorari filed in circuit court no later than 30 calendar days following rendition of the board's decision.

(Ord. No. 07-20, § 2, 7-10-07; Ord. No. 11-01, §§ 6, 7, 1-18-10; Ord. No. 11-23, § 7, 10-11-11)