

RESOLUTION NO. 2022 - 090

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS,
POLK COUNTY, FLORIDA, REVISING DE NOVO HEARING
PROCEDURES.**

WHEREAS, the Polk County Board of County Commissioners (the "Board") adopted Revised De Novo Hearing Procedures on July 26, 2011; and

WHEREAS, the Board desires to revise and clarify the procedures used during de novo hearings.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF
POLK COUNTY, FLORIDA, THAT:**

SECTION 1. DEFINITIONS. For the purpose of this Resolution, the definitions contained in this Paragraph shall apply unless otherwise specifically stated. If not defined in this Resolution, terms shall have the same definition as provided in the Polk County Land Development Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Use of the masculine gender shall include the feminine gender and vice versa. The word "shall" is always mandatory and not merely discretionary.

1. **"Applicant"** shall mean the entity(ies) or individual(s) who filed the application for Level 3 Review.
2. **"Board"** shall mean the Board of County Commissioners of Polk County, Florida.
3. **"Land Development Division"** shall mean the division under the Board for the administration of the Land Development Code and all succeeding documents which serve to regulate land development within Polk County. The term shall include any division or agency which succeeds the Land Development Division in the performance of this function.
4. **"LDC"** shall mean the Polk County Land Development Code.
5. **"Organized Opposition"** shall mean either:
 - a. An Entity(ies) or individual(s) that has filed an application for a de novo hearing in accordance with the LDC; or
 - b. Individual(s) that has received written authorization from at least five (5) entities and/or individuals to speak on their behalf against the application and have agreed to waive the ability to speak during the public comment portion of the public hearing for the de novo.
6. **"Staff Report"** shall mean a report submitted by staff of the Land Development Division containing staff's analysis of the application and recommendation.

SECTION 2. DE NOVO PROCEDURES. Upon the request of a de novo hearing in accordance with the LDC, the following procedures shall apply, unless altered by the Board at the hearing, which shall be at the sole discretion of the Board:

1. First, county staff will present a summary of the Staff Report and staff's recommendation.
2. Following county staff's presentation of the summary of the Staff Report and recommendation, the Applicant will have thirty (30) minutes to present the Applicant's case.
3. Following the presentation of the Applicant's case, Organized Opposition, if any, will be given thirty (30) minutes to present the Organized Opposition's case. If more than one entity or individual qualifies as Organized Opposition, the thirty (30) minutes allotted to the Organized Opposition shall be divided equally amongst the Organized Opposition. For example, if three individuals qualify as Organized Opposition then each individual will be allotted ten (10) minutes to present their case.
 - a. Individuals which desire to be recognized as Organized Opposition who did not file an application for a de novo hearing shall provide the written authorization to speak on behalf of others to the Board prior to presenting the Organized Opposition's case.
4. Following the presentation of the Organized Opposition's case, The Board will hear from the members of the public. Each person speaking during the public comment portion of the case will be allotted three (3) minutes. Individuals who have given written authorization to the Organized Opposition to speak on their behalf will not be allotted three (3) minutes to speak during the public comment portion of the case.
5. Once the public comment portion has been closed, the Applicant will have five (5) minutes and any time reserved from its case presentation to respond to the Organized Opposition's case and comments made during the public comment portion.
6. After Applicant has had the opportunity to respond the Organized Opposition and comments, the Chair will close the public hearing and the Board will discuss the matter and vote.
7. At any time, Board members may question staff, the Applicant, Organized Opposition or members of public which give testimony or evidence.

SECTION 3. DE NOVO HEARING RECORD, EXPERTS AND WITNESSES

1. All documents attached to the agenda item for the de novo hearing shall be deemed part of the record unless removed from the record by motion of the Board.

2. All presentations including, without limitation, PowerPoint presentations given to the Board during a de novo hearing shall be deemed part of the record unless removed from the record by motion of the Board.
3. County staff submitting the Staff Report shall be deemed experts in land planning unless disqualified by motion of the Board.
4. Applicants, Organized Opposition and members of the public may request documents to be entered into the record during their case presentation or the time period in which they speak.
5. Applicants, Organized Opposition and members of the public may request a witness to be recognized as an expert. During such time, a request can be made to pause the allotted time to allow the expert to be tendered to the Board.
6. All persons desiring to speak must swear or affirm to tell the truth. All persons who provide testimony or evidence during a de novo hearing shall be deemed under oath pursuant to Section 837.02, Florida Statutes entitled Perjury in Official Proceedings which provides that whoever makes a false statement, which he or she does not believe to be true, under oath in an official proceeding in regard to any material matter, commits a felony of the third degree.
7. Applicant and their witnesses shall be subject to cross-examination by the Organized Opposition. Organized Opposition and their witnesses shall be subject to cross-examination by the Applicant.

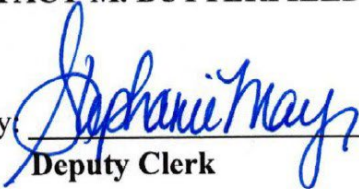
SECTION 4. EX PARTE COMMUNICATIONS AND SITE VISITS. In addition to Section 286.0115(2)(C), Florida Statutes (2022), as it may be amended, superseded or replaced, which provides “a person may not be precluded from communicating directly with a member of the decisionmaking body by application of ex parte communication prohibitions. Disclosure of such communications by a member of the decisionmaking body is not required, and such nondisclosure shall not be presumed prejudicial to the decision of the decisionmaking body” the Board adopts the following alternative disclosure process pursuant to Section 286.0115(1), Florida Statutes, to remove the presumption of prejudice from ex parte communications from de novo hearings.

1. Because Board members are local elected officials who receive numerous communications from the public, unless otherwise stated by a Board member at the de novo hearing, it should be presumed that ex parte communications have been made to the members of the Board regarding the matter subject to the de novo hearing.
2. During the hearing, the Board may be requested to disclose any ex parte communications or site visits they have had regarding the matter subject to the de novo hearing by the County Attorney, Applicant, Organized Opposition and the public.
3. During the hearing, without using their allotted time, the Applicant, the Organized Opposition and the public may question the members of the Board regarding any ex parte communications or site visits they have had regarding the matter subject to the de novo hearing.

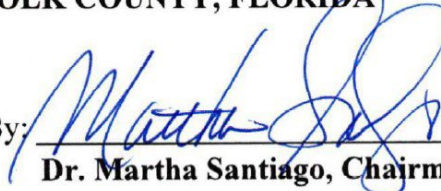
4. Unless a Board member recuses themselves from the hearing, the Board member has determined that he or she is able to hear the case and fairly and impartially decide on the substantial competent evidence in the record of the de novo hearing.

ADOPTED this 10th day of September 2022.

ATTEST:
STACY M. BUTTERFIELD, Clerk

By: 
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
POLK COUNTY, FLORIDA

By: 
Dr. Martha Santiago, Chairman

P. 59

