



# Guide to Public Participation

Addressing:  
Hearing Examiner Process

# Guide to Public Participation before the Hearing Examiner

Lee County employs two attorneys specializing in local government and land use law to serve as Hearing Examiners. Their responsibilities include accepting testimony and evidence in the following matters:

## Code Enforcement

Applications to change the zoning designation of property applications for variances and special exceptions

Appeals of administrative actions by County staff

The Hearing Examiners have final decision making authority in code enforcement matters, variances, and special exceptions. Affected parties may appeal these final decisions to circuit court.

The Hearing Examiners prepare formal recommendations to the Board of County Commissioners on applications to change the zoning designation of property. The Board may choose to follow or modify the recommended action.

## Conduct of Hearings

### Code Enforcement

Code Enforcement hearings are held on Mondays. County staff prepares an agenda in advance of hearing. The County notifies violators of the hearing by certified mail, posting, or hand delivery. The Hearing Examiners preside over each case on the agenda.

### Order of Proceedings

### Oath

The Hearing Examiner administers an oath to persons intending to testify during hearing.

### County's Presentation

The County presents evidence on each case. The evidence typically includes an affidavit from the inspecting officer, photographs and correspondence related to the case.

### Violator's Presentation

Following the County's presentation, the violator may present testimony and evidence for the Hearing Examiner to accept.

### Witness Participation

There is no testimony from the public, unless called as witnesses by the County or the violator.

### Orders

The Hearing Examiner renders a decision on the case at hearing, and issues a final written Order shortly thereafter. An Order Finding Violation sets a date for the property owner to correct the violation and establishes the fine if the violation is not timely corrected. The Order may also award prosecution costs.

The Hearing Examiner may continue a Code Enforcement case to a new hearing date.

## Zoning Matters

The County schedules zoning matters on specific dates published in the newspaper. The Hearing Examiner may continue a zoning matter to a new hearing date.

## Order of Proceedings

### Oath

The Hearing Examiner administers an oath to persons intending to testify during the hearing. This includes County staff, the applicant and their representatives, and members of the public.

### Applicant's Presentation

An applicant seeking zoning approval explains how the request meets County review criteria. This presentation may include testimony from expert witnesses. The Hearing Examiner and County staff may cross examine each witness. Members of the public may pose questions during the public comment portion of the hearing.

### Staff's Presentation:

County staff's presentation includes a summary of their staff report and recommendation. Staff's presentation may also include testimony from expert witnesses. The Hearing Examiner and applicant may cross examine staff's witnesses. Members of the public may pose questions during the public comment portion of the hearing.

### Public Comment

At the conclusion of staff's presentation, the Hearing Examiner will invite members of the public to the podium. The public may pose questions to applicant and staff. The parties will address questions following public comment.

Members of the public should leave a completed Public Participation Form with the Hearing Examiner. The form provides a record of participation in the hearing. The Hearing Examiner may ask the public to indicate their property in relation to the site under review on an aerial map. Public comments should focus on the substance of the zoning request. The Hearing Examiner may refuse to accept testimony that is irrelevant to the application. The Applicant, County staff, and the Hearing Examiner may cross-examine members of the public.

During public comment, members of the public may ask questions, suggest conditions to address concerns and state their position on the requested zoning change. Public comment is most effective when the speaker identifies specific areas of concern. Since many people are not comfortable speaking in public, it may be helpful to prepare a brief written outline to use as a guide.

### Recommendation or Decision

After the hearing, the Hearing Examiner will prepare a written recommendation to the Board of County Commissioners or a final decision depending on the nature of the hearing. All persons completing a Public Participation Form with their email address will receive a copy of the recommendation/decision via electronic mail.

The Hearing Examiner's recommendation/decision is a public record. Once rendered, the public may access a copy at:

<http://www.leegov.com/hearingexaminer/search-rendered-decisions-recommendations>

### Final Hearings on Applications to Change Zoning Classification

The Board of County Commissioners conducts the final hearing on applications to rezone property. The public may address the Board only if they spoke on the record during the Hearing Examiner's hearing.

Written statements read into the record on behalf of another member of the public do not qualify the author to speak at the final Board hearing. Public submitting only written statements into the record may not address the Board at the final hearing. The written statement is part of the record.

### Ex Parte

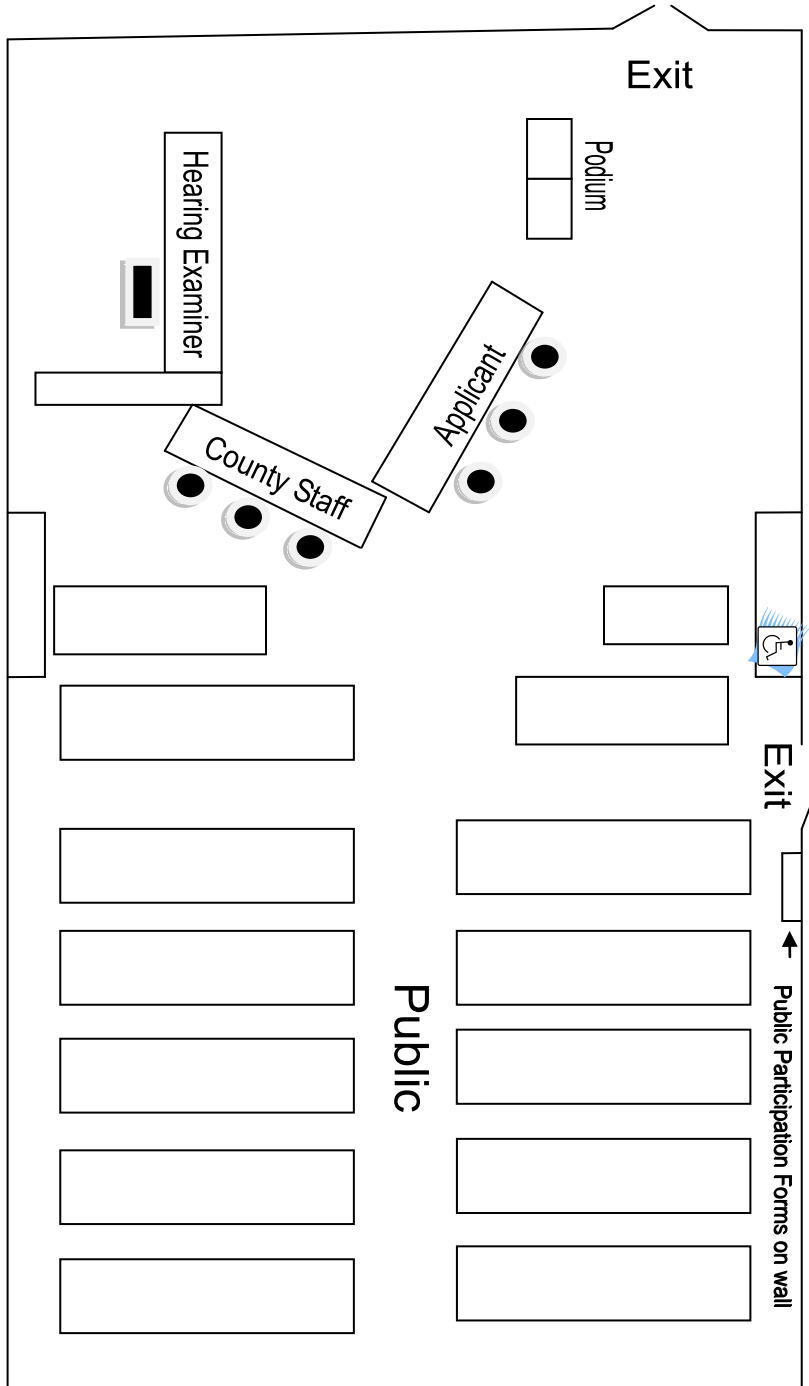
Lee County regulations prohibit *ex parte* communications with the Hearing Examiners or their staff on pending zoning matters. This means it is a violation of County ordinance to contact the Hearing Examiners on pending cases outside the public hearing process.

### Review of Final Decisions

The Board does not review final decisions of the Hearing Examiner on variances and special exceptions. If challenged, these decisions are reviewed by the circuit court. The exception to this procedure are cases pertaining to 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**

\*\*\*\*\*

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.lee.gov/hearingexaminer/search-rendered-decisions-recommendations](http://www.lee.gov/hearingexaminer/search-rendered-decisions-recommendations)

**IF EMAIL ADDRESS NOT AVAILABLE:**

Participant mailing address: \_\_\_\_\_

\_\_\_\_\_  
(City) (State) (Zip Code)

**IMPORTANT NOTICE**

1. Members of the public may speak from the podium during public comment.
2. Members of the public must speak before the Hearing Examiner in order to speak at the Board of County Commissioners' meeting on this case.

\*\*\*\*\*

/Y/      /N/

**YOU MAY TEAR THE BOTTOM OF THIS PAGE FOR WEBSITE INFORMATION**

\*\*\*\*\*

Recommendation/decision will be posted online at:

[www.lee.gov/hearingexaminer/search-rendered-decisions-recommendations](http://www.lee.gov/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 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.

### **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 September 10, 2019