

## Rezoning Process

Once an application for consideration for a zoning change is submitted to the Planning Division, staff conducts research and makes a written recommendation to the Rezoning Hearing Examiner (RHE) based on the following six-point criteria set forth in Section 2.08.02.D.6 of the Land Development Code:

1. *Consistency with the Comprehensive Plan.* Whether the proposed amendment is consistent with the Comprehensive Plan;
2. *Consistency with this Code.* Whether the proposed amendment is in conflict with any portion of the Land Development Code, and is consistent with the stated purpose and intent of the Land Development Code;
3. *Compatibility with surrounding uses.* Whether and the extent to which the proposed amendment is compatible with existing and proposed used in the area of the subject property(s);
4. *Changed conditions.* Whether and the extent of which there are any changed conditions that impact the amendment or property(s);
5. *Effect on natural environment.* Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment;
6. *Development patterns.* Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.

The worksheet and all other evidence introduced by staff, the applicant, and the public are presented to the RHE at a quasi-judicial hearing. The RHE has 15 days to produce a written recommendation to the Planning Division to be forwarded to the Board of County Commissioners (BCC.) The BCC reviews all testimony and evidence for each case and votes to adopt, deny, or remand back to the RHE for more information.

NOTE: For your information, that portion of the Code applicable to rezonings is listed in its entirety on the following pages.

*2.08.02 Quasi-judicial rezonings.*

*A. Office of Rezoning Hearing Examiner established; primary function - administration.*

1. The Office of Rezoning Hearing Examiner is hereby established. The Rezoning Hearing Examiner shall have the powers and authority set forth in this article.
2. Any code or ordinance to the contrary notwithstanding, applications for rezonings requiring a quasi-judicial hearing shall be heard by a Rezoning Hearing Examiner<sup>1</sup>, as provided herein, who shall make recommendation to the Board of County Commissioners whose decisions shall be final.
3. The Rezoning Hearing Examiner shall be appointed by the Board of County Commissioners which may appoint, as necessary, deputy rezoning hearing examiners or rezoning hearing examiners pro tempore. All rezoning hearing examiners shall hold their positions at the pleasure of the Board of County Commissioners.
4. The Department of Growth Management shall provide administrative support to the Rezoning Hearing Examiner and shall appoint one of its employees to serve as records custodian.

*B. Conduct of meetings; reports and records.*

1. The Board of County Commissioners shall adopt rules for transaction of rezoning hearing examiner business and the rezoning hearing examiner shall conduct meetings pursuant to the provisions of the applicable codes, ordinances and resolutions.
2. The Department of Growth Management shall provide for a court reporter at all proceedings. All hearings shall be transcribed. Additional transcripts shall be provided by the court reporter at the request of interested parties who shall bear the costs thereof.
3. The Department of Growth Management shall keep indexed records of all hearings.

*C. Applications for rezoning.* Any person requesting a rezoning of a given parcel of real property shall make an application for such change with the Department of Growth Management on forms provided by the Department of Growth Management. The application forms shall be accompanied by a copy of this

<sup>1</sup>See Section 13.16.00 for rezonings on Pensacola Beach

ordinance and those resolutions that establish procedures for quasi-judicial hearings and procedures for the disclosure of *ex parte* communications.

1. When such application is initiated by the owner of the property in question or the authorized agent(s) of such owner, the application shall indicate by legal description and by street address, where possible, the property to be affected by the proposed change, setting forth the present zoning applicable thereto and specifying the zoning district requested by the applicant. Such application shall be in a form substantially in accordance with the form prescribed by the County.
2. All such applications by owners or duly authorized agents or individuals shall include a verified statement showing each and every individual person having a legal and/or equitable ownership interest in the property upon which the application for rezoning is sought, except limited partnerships and corporations in which case the name and address of the partnership or corporation will be sufficient. When the property is in fee simple ownership, a copy of the deed shall be sufficient to comply with the terms of this part.
3. Upon submitting an application, there shall be paid to the Department of Growth management a sum for each requested change; provided, however, that as many contiguous lots or parcels of property as the applicant owns may be included in any single petition. The sum to be paid for said rezoning shall be prescribed by the Board of County Commissioners.
4. Not later than 60 days after submission, the Department of Growth Management shall schedule a hearing and forward completed applications to the Rezoning Hearing Examiner who shall conduct a public hearing and make a recommendation to the Board of County Commissioners.

D. *Notice and public hearing.*

1. The Department of Growth Management shall notify the current property owners within a 500-foot radius of the property proposed to be rezoned, as well as the owner(s) of the property under consideration for change or agent(s) for the owners(s), of the quasi-judicial public hearing by certified mail, return receipt requested, at least 30 days prior to the first scheduled quasi-judicial public hearing and, in addition, shall advise the recipient(s) that only those present and giving testimony at the quasi-judicial hearing(s) may subsequently address the recommendation of the hearing examiner when it is considered by the Board of County Commissioners.
  - a. Notification of each subsequent hearing before the rezoning hearing examiner must occur at least ten days prior to the hearing.

Distribution of notices is to be timed in a manner that would

reasonably result in actual receipt of said notices within the specified time frame.

- b. Each notice shall state the case number, current zoning, proposed zoning, physical address, date, time, and place of the quasi-judicial public hearing. See Section 11.00.01C relative to notification within Navy Air Field areas of impact.
2. The Department of Growth Management shall place a 20" x 30" sign on the property to be rezoned announcing the case number, current zoning, proposed zoning, physical address, date, time and location of the quasi-judicial public hearing(s) at least 30 days prior to the first hearing. The sign shall remain posted on the property until a final decision by the Board of County Commissioners.
3. The Department of Growth Management shall publish in a newspaper of general circulation in Escambia County, at least 30 days prior to the public hearing, a notice stating the case number, current zoning, proposed zoning, physical address, date, time and place of the public hearing. The applicant shall deposit with the Board of County Commissioners an amount established by resolution of the Board of County Commissioners to cover the cost of hearing, publication, and distribution of notice.
4. Any reports, analyses or recommendations prepared by the Department of Growth Management for the rezoning hearing examiner shall be copied to the applicant and made available to any interested party, as provided by law, at least ten days prior to the hearing. All such reports, analyses, and recommendations shall include information giving examples of the most intensive uses permitted within the requested zoning district in accordance with the Land Development Code.
5. Once the applicant has submitted his or her application for rezoning, the request may not be changed to a more intensive use. The applicant may amend the application to a less intensive zoning district provided the notice provisions set forth in Section 2,08.02.D have been complied with.
6. The Rezoning Hearing Examiner shall consider each application at a public hearing and, within 15 days of such hearing, make a written recommendation to the Board of County Commissioners setting forth findings of fact and conclusions of law. Such recommendation shall be for approval, approval with modification, or denial including reasons for any modifications or denial; and shall include consideration of the following:
  - a. *Consistency with the Comprehensive Plan.* Whether the proposed amendment is consistent with the Comprehensive Plan;
  - b. *Consistency with this Code.* Whether the proposed amendment is in conflict with any portion of the Land Development Code, and is

consistent with the stated purpose and intent of the Land Development Code;

- c. *Compatibility with surrounding uses.* Whether and the extent to which the proposed amendment is compatible with existing and proposed used in the area of the subject property(s);
  - d. *Changed conditions.* Whether and the extent of which there are any changed conditions that impact the amendment or property(s);
  - e. *Effect on natural environment.* Whether and the extent to which the proposed amendment would result in significant adverse impacts on the natural environment;
  - f. *Development patterns.* Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern.
7. Within ten days of receipt of the rezoning hearing examiner recommended order, the Department of Growth Management shall forward a copy of the recommended order to the applicant and to those interested parties who appeared at the quasi-judicial hearing. The applicant and such interested parties shall be advised as to the case number, current zoning, proposed zoning, physical address, date, time and place of the hearing at which the Board of County Commissioners shall consider the recommended order.

E. *Board of County Commissioners; review and action on rezonings.*

- 1. The Board of County Commissioners shall review the record and the recommendation of the Rezoning Hearing Examiner and either adopt the recommended order, modify the recommended order as set forth herein, reject the recommended order, or remand the matter back to the Rezoning Hearing Examiner for additional facts or clarification. Findings-of-fact may not be rejected or modified unless they are clearly erroneous or unsupported by the record.

When rejecting or modifying conclusions of law, the Board of County Commissioners must state with particularity its reasons for rejecting or modifying the recommended conclusion of law and must make a finding that its substituted conclusion of law is as or more reasonable than the conclusion that was rejected or modified. However, the Board of County Commissioners may not modify the recommendation to a more intensive use than recommended by the hearing examiner; rather the matter shall be remanded with instructions. The review shall be limited to the record

below. Only a party or record to the proceedings before the hearing examiner or representative shall be afforded the right to address the Board of County Commissioners and only as to the correctness of the

findings of fact or conclusions of law as based on the record. The Board of County Commissioners shall not hear testimony.

2. In the event the matter is remanded to the Rezoning Hearing Examiner, an additional quasi-judicial hearing for the purpose of hearing testimony and receiving evidence relevant to additional facts and clarification requested by the Board of County Commissioners, will be conducted by the same rezoning hearing examiner. Within 15 days of the hearing on remand, the Rezoning Hearing Examiner shall submit a supplemental recommendation to the Board of County Commissioners for review in accordance with 1. above. When the supplemental recommendation is considered by the Board of County Commissioners, the entire record relating to the initial hearing and all supplemental hearings shall be presented to the Board of County Commissioners.

Note: re-notification to property owners within the 500-foot radius, as well as the owner(s) of the property under consideration for change and those persons who testified or gave evidence at the initial hearing is required at least ten days prior to the hearing in accordance with Section 2.08.02.D.1.b for all remanded cases. Additionally, all persons who were furnished a copy of the original recommended order shall be furnished a copy of the supplemental order.

3. The Department of Growth Management Services shall provide the Planning Board with the resumes of all final action taken by the Board of County Commissioners on rezoning requests.
4. Exemption from Administrative Procedures Act. Escambia County is not an agency for the purposes of F.S. § Ch. 120. Therefore, the Administrative Procedures Act is not applicable to these proceedings.

F. *Decisions By the Board of County Commissioners shall be final; subsequent application.*

1. *Final decisions.* Actions by the Board of County Commissioners adopting or rejecting the recommended order of the rezoning hearing examiner for rezoning of particular parcels shall be final. Thereafter, if a rezoning is approved, the Board of County Commissioners shall amend the zoning map to reflect its final decision in accordance with the ordinance enactment procedures set forth in 2.08.03. Any party who wishes to seek judicial review of the decision of the Board of County Commissioners must do so within 30 days of the date the Board of County Commissioners approves or rejects the recommended order of the hearing officer. Written notice of the filing of any such petition for judicial review shall promptly be

provided by the Department of Growth Management to all property owners within 500 feet of the property for which the rezoning was sought.

2. *Limitation on subsequent application.* Whenever an application for rezoning shall be denied by the Board of County Commissioners; no new application for identical action on the same parcel shall be accepted for consideration within a period of 180 days of the decision of denial.