



BOARD OF COUNTY COMMISSIONERS
DESOTO COUNTY

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Donald D. Conn
County Attorney

TO: DeSoto County Planning Commissioners
FROM: Donald D. Conn, County Attorney
RE: Quasi-Judicial Hearing Procedures – Proposed Revision
DATE: October 25, 2017

The proposed revisions are intended to bring a greater degree of order and fairness to proceedings by avoiding surprise, leveling the playing field and protecting due process rights of all participants. The proposed revisions:

- Do not affect the right of the **Public** to testify as to facts; members of the Public wishing to provide fact testimony need only fill out a card at the hearing.
- Require **Parties** to Disclose Exhibits and Witnesses 10 Days Prior to a Hearing:
 - **County Staff and Applicant** must provide (1) copies of all exhibits, other than rebuttal exhibits, (2) the names, mailing and email addresses, and phone numbers of all witnesses who will be called to testify on their behalf, and (3) copies of resumes for expert witnesses and a summary of their testimony;
 - A person or organization wishing to cross-examine witnesses, offer rebuttal testimony and closing argument at the hearing must qualify and be accepted as an **Intervenor** by providing (1) an explanation of how their interest differs from the interest of the public at large, (2) a summary of argument in favor or against the application, (3) copies of all exhibits, other than rebuttal exhibits, and (4) the names, mailing and email addresses, and phone numbers of all witnesses who will be called to testify on their behalf, including resumes of any witness to be called as an expert, and a summary of their expert opinion testimony; intervention is not a right but may be allowed in the sound discretion of the board or commission; an Intervenor takes the proceeding as it exists and may not introduce new issues;
 - Members of the **Public** wishing to testify as an expert must be qualified and accepted by providing a copy of their exhibits, other than rebuttal exhibits, resume and summary of their expert testimony.

- Opinion testimony shall only be accepted from persons qualified and accepted as experts.
- Rebuttal testimony, exhibits and closing argument will be allowed by **Intervenors, the Applicant and County Staff.**
- Cross examination may be conducted by **Board members, the Applicant, Intervenors, and County Staff.**
- The County Attorney will provide advice to the Chairman on evidentiary and procedural issues
- The Chairman is authorized to rule on:
 - requests to intervene,
 - requests by witnesses to be accepted as experts,
 - requests to modify time and other requirements if good cause is shown,
 - may set limits on testimony,
 - may set limits on the length of hearing on any day, and
 - may exclude testimony that is irrelevant, immaterial, incompetent, unreliable or unduly repetitious.

**DESOTO COUNTY, FLORIDA
ORDINANCE NO. 2017-_____**

**AN ORDINANCE OF DESOTO COUNTY, FLORIDA,
CONCERNING INTERVENTION, FACT AND EXPERT
TESTMONY AND PRESENTATION OF EVIDENCE IN
QUASI-JUDICIAL HEARINGS; PROVIDING FOR
SEVERABILITY, REPEAL OF CONFLICTING
ORDINANCES, CODIFICATION AND AN EFFECTIVE
DATE.**

WHEREAS, the DeSoto County Board of County Commissioners (“Board”) has adopted the Land Development Regulations (“LDR”) which are included in the Desoto County Code of Ordinances (“Code”) as Chapter 20; and

WHEREAS, Sections 20-1401 through 20-1403 of the Code establish procedures to be followed in quasi-judicial hearings; and

WHEREAS, the Board finds there is a need to amend the procedures concerning quasi-judicial hearing to allow party intervention under specified conditions in order to clarify the rights and responsibilities of an intervenor and persons wishing to be qualified as an expert witness; and

WHEREAS, the Board finds there is a need to clarify the procedure by which evidentiary and procedural issues and objections will be handled in quasi-judicial hearings; and

WHEREAS, the Board hereby finds that this ordinance advances an important government purpose by clarifying quasi-judicial hearing procedures and requirements; and

WHEREAS, the Board hereby finds that this ordinance is in the public interest, promotes the public welfare, and that adoption of this Ordinance is a proper exercise of the County’s police powers.

NOW THEREFORE, be it ordained by the Board of County Commissioners of DeSoto County, Florida, as follows:

Section 1. Sections 20-1402 and 20-1403 of the Code of Ordinances are substantially amended to read as follows:

Sec. 20-1402. - Preliminary matters.

(a) The County Attorney shall represent the Board of County Commissioners, the Planning Commission, or other County board or commission, provide advice on all evidentiary and procedural issues and objections, and advise the County board or commission as to the applicable law and necessary factual findings.

(b) In all quasi-judicial proceedings, the applicant shall bear the burden of demonstrating by competent and substantial evidence that the application satisfies the standards and requirements of the LDRs and the Comprehensive Plan. At least ten (10) calendar days prior to the hearing, the applicant shall provide the Development Director with sufficient copies as determined by the Development Director of all exhibits (other than rebuttal exhibits) that will be presented at the hearing, the names, mailing and email addresses, and phone numbers of all witnesses who will be called to testify on their behalf, including resumes of any witness to be called as an expert, and a summary of their expert opinion testimony.

(c) Prior to the start of any quasi-judicial hearing, each board or commission member shall disclose any ex parte communications that should be brought to the attention of the public and the board or commission.

(d) Any member of the public wishing to present fact testimony must complete a card and present it to the board or commission clerk. The purpose of testimony is to present competent substantial evidence that may be considered by the board or commission. If a member of the public wishes to testify as an expert, at least ten (10) calendar days prior to the hearing, he or she must submit a copy of their resume, summary of expert opinion testimony, and copies of their exhibits (other than rebuttal exhibits) in sufficient number as determined by the Development Director.

(e) Any person or organization requesting intervenor status must submit a request in writing to the Development Director at least ten (10) calendar days prior to the hearing which includes: (1) a detailed statement of their interest in the application being considered and how that interest differs from the interest of the public at large; (2) argument in favor or against the application; (3) sufficient copies as determined by the Development Director of all exhibits (other than rebuttal exhibits) that will be presented at the hearing; and (4) the names, mailing and email addresses, and phone numbers of all witnesses who will be called to testify on their behalf, including resumes of any witness to be called as an expert, and a summary of their expert opinion testimony. Intervention is not a matter of right but may be granted in the sound discretion of the board or commission. If granted, intervention is subordinate to, and in recognition of, the propriety of the main proceeding. An intervenor takes the proceeding and the issues as they exist and may not introduce new issues.

(f) Opinion testimony will only be allowed by witnesses who have been qualified and accepted as experts.

(g) Anyone wishing to testify must declare that he or she will testify truthfully by taking an oath or affirmation prior to testifying.

(h) At any time during the proceedings, any member of the board or commission, or the County Attorney, may ask questions of the applicant, intervenor(s), witness(es), or County staff.

(i) All decisions by a County board or commission shall be based on competent substantial evidence presented at the hearing, including testimony, exhibits and other evidence that is accepted a part of the record. Strict rules of evidence shall not apply, but evidence must be relevant to the issues before the County board or commission.

Sec. 20-1403. - Presentation and hearing.

(a) *Conduct of hearing.* The hearing shall be conducted in the following manner:

- (1) Open hearing.
- (2) Rulings by Chairman or Presiding Officer on intervention, expert witness qualifications and other preliminary matters
- (3) County staff presentation of staff report.
- (4) Applicant presentation in support of application.
- (5) Party-intervenor in favor of the application.
- (6) Party-intervenor opposed to the application.
- (7) Public testimony as to facts and qualified expert opinions.
- (8) Rebuttal testimony and exhibits, and closing argument by party-intervenor.
- (9) Rebuttal testimony and exhibits, and closing argument by applicant.
- (10) Rebuttal testimony and exhibits, and closing argument by County staff.
- (11) Close hearing and commence deliberations.

(b) *Cross examination of witnesses.* After each witness testifies, cross examination of the witness is permitted about matters to which the witness testified by members of the Board, County staff, and on behalf of the applicant and party-intervenor.

(c) *Chairman or Presiding Officer.* The Chairman or Presiding Officer shall at all times control the conduct of the hearing, rule on requests to intervene, requests by witnesses to be accepted as experts, and requests to modify time or other requirements if good cause is shown. The Chairman or Presiding Officer and may set time limits on testimony and length of hearing on any day, may exercise his or her discretion regarding the order of presentation of testimony, and may exclude testimony or evidence that is irrelevant, immaterial, incompetent, unreliable or unduly repetitions. The County Attorney shall advise the Chairman or Presiding Officer on such matters.

Section 2. – Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

Section 3. – Repeal.

All ordinances, resolutions, official determinations or parts thereof previously adopted or entered by the County in conflict with this ordinance are hereby repealed to the extent inconsistent herewith.

Section 4. – Code of Ordinances

This Ordinance shall be included in and become part of the DeSoto County Code of Ordinances.

Section 5. – Effective Date.

This Ordinance takes effect immediately upon adoption.

PASSED AND DULY ADOPTED in regular session, by the BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA, this _____ day of _____, 2017.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF DESOTO COUNTY, FLORIDA**

Mandy Hines

By: _____
Elton A. Langford
Chairman

Approved as to form and legal sufficiency:

Donald D. Conn
County Attorney