

Charlotte County

Sec. 3-5-564. - Quasi-judicial hearing process.

- (a) Within fifteen (15) calendar days of issuance of a preliminary decision pursuant to subsection 3-5-563(a) or (b), above, any aggrieved or adversely affected party who wishes to challenge or support such decision shall request a quasi-judicial hearing to challenge or support the preliminary decision on the basis that it is not consistent with the comprehensive plan, the land development regulations or both. Such request shall be filed with the department on forms prepared pursuant to subsection 3-5-563(c) and shall be accompanied by a non-refundable fee as established by resolution of the board of county commissioners. For purposes of this article, the term "party" or "parties" shall mean an "aggrieved or adversely affected party", as such term is defined in F.S. section 163.3215(2). The county shall not be bound by the preliminary decision. If no hearing is requested, the preliminary decision shall become final.
- (b) A party shall not be required to be represented by an attorney in order to participate in the hearings.
- (c) Quasi-judicial hearing before special master.
 - (1) Within forty-five (45) calendar days after a request to challenge or support the preliminary decision is submitted pursuant to subsection (a), above, a quasi-judicial hearing shall be held before an impartial special master to determine whether the preliminary decision is consistent with the comprehensive plan, the land development regulations or both. If multiple parties have requested a quasi-judicial hearing pursuant to subsection (a), above, to challenge or support the same preliminary decision, the county shall consolidate all such requests and shall hold a single hearing before the special master. If a party needs additional time to prepare and present a case for the hearing, the department may grant up to an additional thirty (30) days to do so, upon a determination that such additional time is necessary.
 - (2) Not less than fifteen (15) days prior to the hearing before the special master, the county shall provide notice of such hearing by publication consistent with the provisions of F.S. section 125.66(4)(b)2. The county shall also post notice prominently at the site that is the subject of the application. The clerk of the board shall also give notice of the set date and time of the hearing by certified mail to the parties. Such notice shall be mailed at least ten (10) calendar days prior to the date set.
 - (3) All parties shall have the opportunity to prepare and present a case for the hearing, to require the disclosure of witnesses and exhibits and to take depositions of witnesses.
 - (4) The special master shall be an attorney who has at least five (5) years' experience. The special master shall have the power to rule on procedural matters, swear witnesses and take their testimony under oath, to issue subpoenas and other orders regarding the conduct of the proceedings, and to compel entry upon the land. The special master shall allow relevant testimony and evidence regarding standing and objections thereto, which shall be a part of the record of the proceedings, but shall not exclude any person from participating in the hearing.
 - (5) Any person who presents testimony or evidence at the hearing shall sign an attendance sheet providing his or her name and mailing address. All testimony shall be under oath.
 - (6) To the maximum extent practicable, the hearing shall be informal. Questioning shall be confined as closely as possible to the scope of direct testimony. The special master may call and question witnesses as he or she deems necessary and appropriate. The special master shall decide all questions of procedure.
 - (7) Ex parte communications relating to the merits of the matter under review shall not be made by any person to the special master.
 - (8) At the hearing before the special master, all parties shall have the opportunity to respond, to present evidence and argument on all issues involved which are related to the preliminary

decision and to conduct cross-examination and submit rebuttal evidence. Public testimony shall be allowed.

- (9) At the hearing before the special master, staff of the department shall present the department's preliminary decision, explain the reasoning for its findings and preliminary decision and answer any questions of the special master.
 - (10) The special master shall recommend written findings of fact and conclusions of law. The standard of review applied by the special master in determining whether a preliminary decision is consistent with the comprehensive plan, the land development regulations or both, shall be strict scrutiny in accordance with Florida law.
 - (11) The special master shall file his or her written recommendation within seven (7) working days of the close of the hearing, with a copy being provided to the clerk of the board. The clerk of the board shall, on the same calendar day or the next working day, mail by certified mail, or otherwise deliver, a copy of the recommendation to the parties and to any person who participated at the hearing and signed the attendance sheet at the hearing before the special master.
- (d) Quasi-judicial hearing before board of county commissioners.
- (1) Within thirty (30) days following the issuance of the written recommendation of the special master, a duly-noticed quasi-judicial hearing shall be held before the board of county commissioners.
 - (2) No less than fifteen (15) days prior to the hearing before the board, the county shall provide notice of such hearing by publication consistent with the provisions of F.S. section 125.66(4)(b)2. The county shall also post notice prominently at the site that is the subject of the application. The clerk of the board shall also give notice of the set date and time of the hearing by certified mail to the parties and to any person who participated at the hearing and who signed an attendance sheet at the hearing before the special master. Such notice shall be mailed at least fifteen (15) calendar days prior to the date set for the hearing.
 - (3) The board shall be bound by the special master's findings of fact, unless the findings of fact are not supported by competent substantial evidence. 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 may question witnesses and parties.
 - (4) Any person who presents evidence or testimony at the hearing shall sign in on an attendance sheet. All testimony shall be under oath.
 - (5) At the hearing before the board, all parties shall have the opportunity to respond, to present evidence and argument on all issues which are related to the special master's recommendations on the preliminary decision and to other matters properly presented to the special master and to conduct cross-examination and submit rebuttal evidence. Public testimony shall be allowed.
 - (6) At the hearing before the board, staff of the department shall present the department's preliminary decision, explain the reasoning for its findings and preliminary decision and answer any questions of the board.
 - (7) Any ex parte communication relating to the merits of the matter under review may not be made to members of the board after the written recommendation of the special master has been received and officially date stamped by the county clerk.
 - (8) The final decision of the board shall be provided in writing within fifteen (15) days of the close of the hearing and shall include findings of fact and conclusions of law, with a copy being provided to the clerk of the board. The clerk of the board shall, on the same calendar day or the next working day, mail by certified mail, or otherwise deliver a copy of the recommendation to the parties and to any person who participated at the hearing and who signed an attendance sheet at the hearing before the board. The final decision of the board is not considered rendered or final until officially date-stamped by the county clerk.

(e) The procedures for notices and hearings in this article are adopted pursuant to F.S. section 163.3215(4). The provisions of this article shall be construed in a manner so as to conform to the requirements of F.S. section 163.3215(4). A party shall bring all actions for relief in connection with a decision issued pursuant to this article under the procedures set forth in this article. The sole method by which a party may challenge any decision under this article shall be as provided in F.S. section 163.3215(4).

(Ord. No. 2008-026, § 1, 3-18-08)