



TRAINING PLANNING & ZONING BOARD

Presented by Tara Salmieri, AICP
Town Attorney _____

Topics for Training



TOPIC 1 – WHO’S ON FIRST? THE PLAYERS AND THEIR ROLES IN THE DEVELOPMENT PROCESS:

- BOARDS (Historic, Planning Board, BZA)
- TOWN COUNCIL (Decisions and Appeals)
- STAFF (Planning, Public Works, Clerk)
- LEGAL (Town Attorney, Opposing Counsel)
- THE DEVELOPMENT PROCESS (consistency, site plan review, plat, impacts, capacity, etc.)

TOPIC 2– THE COMPREHENSIVE PLAN – What is it? How Does it Work? Why is it important?

TOPIC 3 - ZONING, SPECIAL EXCEPTIONS & VARIANCES – What are these things? How do they work? What matters, and what doesn’t when you are making a decision?

TOPIC 4 - LEGISLATIVE DECISIONS AND QUASI-JUDICIAL DECISIONS – How are they different and why does it matter?

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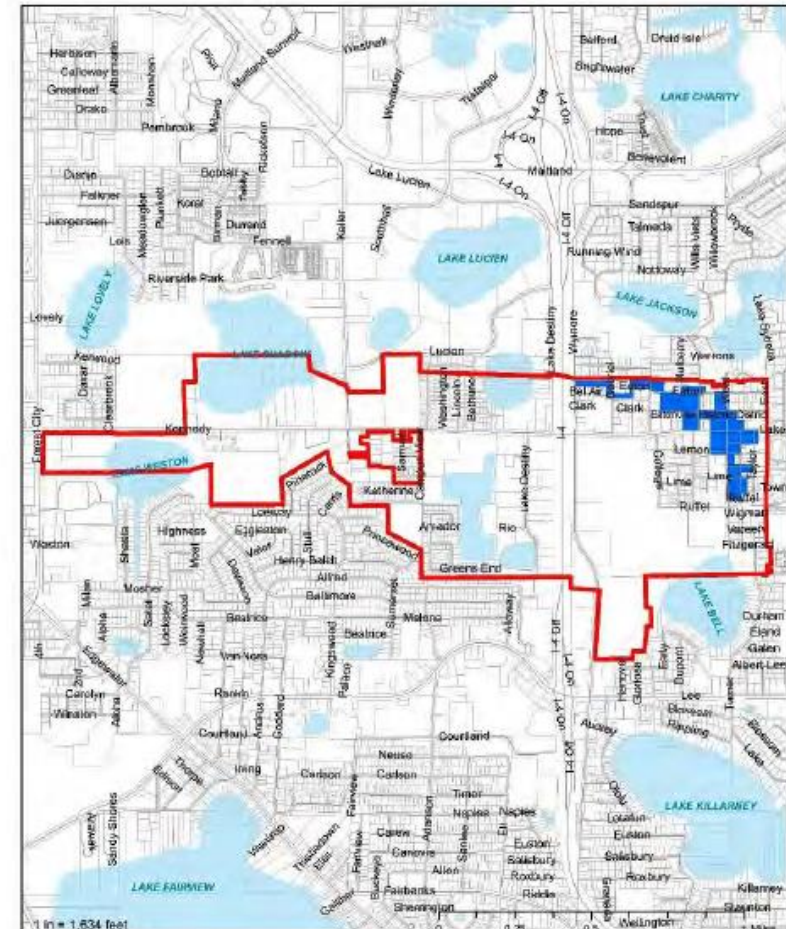
Boards

- Historic Preservation
- Planning Board



Historic Preservation Board

- **Required meetings:** 4 times a year
- **Rules of procedure-** board is to adopt
- **Responsibilities-**complimentary to state historic preservation board office.
 - Nominate buildings/districts
 - Evaluate demolition of buildings in the district
 - Appoint subcommittees



Planning Board



- Who can be board members?
 - 5 residents, appointed by town council (additional 2 alternate members)
- How long is a term?
 - 3 years, staggered so that not more than 2 terms expire
- What is a considered a quorum?
 - Four members
- What is a favorable vote?
 - Majority of members attending a meeting shall be required to case of favorable vote on any matter.

Planning Board Duties



The duties of the planning board shall be as follows:

1. To act in an **advisory capacity** to the town council on questions relating to zoning, or proposals to **change zoning regulations, rezonings**.
2. To study an **existing comprehensive plan document** make recommendations to the town council for **changes in the existing comprehensive land use element**
3. Plat Review
4. Site Plan Review
5. Special Exception Review
6. Variance(s)

To perform such other duties as may from time to time be assigned to the planning board by the town council. Those duties and responsibilities shall be performed in the same manner and with the same procedures except where changed herein or in future acts of the town council.

Town Council



- Appoint members to relevant boards
- Can direct special studies and assign to specific board
- Final Decision Maker

Staff & Legal

- Town Clerk
- Planning Director
- Public Works Director
- Attorneys



Staff



Town Clerk

- Maintains custody of municipal records, including ordinances, resolutions, contracts and agreements; and promulgates procedures for the orderly management, maintenance, retention and destruction of said records in accordance with state law.
- Post Meeting Notices for various ordinances and meetings, Packet assembly and distribution subject to the Sunshine Law
- Records Requests as provided by State Statute
- Prepares minutes of meetings established by the town.

Certification available for Clerks

- Certified Municipal Clerk (CMC) program
- Master Municipal Clerk (MMC) Program

Staff



Planning Director

- **Interprets** the Code and the Comprehensive Plan
- Analyze, research and provide evidence to support the planning inquiries.
- **Implements** the Comprehensive Plan and the Land Development Code.
- Reviews development's against the town's policies, they DO NOT create standards, policies, or reviews outside of the adopted policies for project review.
- Update, revise and add additional policies, standards as directed by the Town Council/Planning Board/BZA.

Certifications for Planners:

- American Institute of Certified planners

Staff



Public Works Director

Responsible for all infrastructure of the Town

- Water
- Sewer
- Roads

Certifications available- Professional engineer, Public Workshop or APWA
(American public works association)

Legal- Town Attorney /Applicant Attorney



- Attorneys
 - Roles for **Town** Attorney:
 - Advises the town on legal ramifications, options and potential issues as it relates to the LAW and the Town's charter and LDC
 - Provides Legal Advice to the Planning Director (when asked for an opinion)
 - Answer's questions and/or interpretation of the Code
 - Roles for **Applicant's** Attorney:
 - Represent the land owner, they do not provide testimony
 - Provide experts as part of the team (planners, architects, engineer)

Certifications: Board Certified- City, county & Local Government Law Certified

Staff Reports

- **Review applications** for consistency with the Town's policies (Comprehensive Plan and Land Development Code)
- **Prepare analysis** and review on applicant's requests
- Provide a **summary of the review, supporting documentation** and recommendations for the item
- **Present findings** during the planning board meeting and Town Council



Town Council
Staff Report
Town of Eatonville

APPLICATION INFORMATION

APPLICATION NUMBER: #DEV2022.06
OWNER: XWAY Inc, a Florida Corporation
APPLICANT: Logan Opsahl and Lowndes Law Firm
PREPARED BY: Tara Salmieri, AICP Town Planner
MEETING DATE:

REQUEST:	A request to change the zoning classification from I-1 Industrial to C-1 Commercial for office and accessory uses.
LOCATION:	200 S. Lake Destiny, Parcel ID 35-21-29-3854-00-0070
ACREAGE:	3.7 +/- Acres
EXISTING ZONING	I-1
FUTURE LAND USE	Commercial
SURROUNDING ZONING and FUTURE LAND DESIGNATIONS:	North – Commercial/ C-1 South – Industrial/ I-1 East – Industrial/I-1 West – Commercial/C-3

STAFF EVALUATION AND FINDINGS

1. PROPOSAL



The proposal, from the application, is to rezone 3.7 +/- acres from I-1 Zoning to C-1 Zoning. The property is located on Lake Destiny with Kennedy roadway frontage.

Recommendation(s):



1. Recommendation of denial
2. Recommendation of approval
3. Recommendation of approval with conditions
4. Recommendation of approval in part, with or without conditions, and denial in part.

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Resources for Planning in Eatonville

- Comprehensive Plan Data, Inventory, Analysis (DIA) [link](#)
- Comprehensive Plan Goals, Objectives and Policies (GOPs) [link](#) (the GOP's start on page 14)
- Town's Land Development Code can be accessed [link](#).



Comprehensive Plan Requirements

- All local governments are required by State law to adopt a comprehensive plan (FS 163.3177 [here](#)).
- The planning process is universal.
- The Comprehensive Plan is the only public document that views the community as a whole. Public participation is vital and legally required.
- The Comprehensive Plan forms a basis for how a community regulates development and how it invests in infrastructure and services.

Comprehensive Plan Role

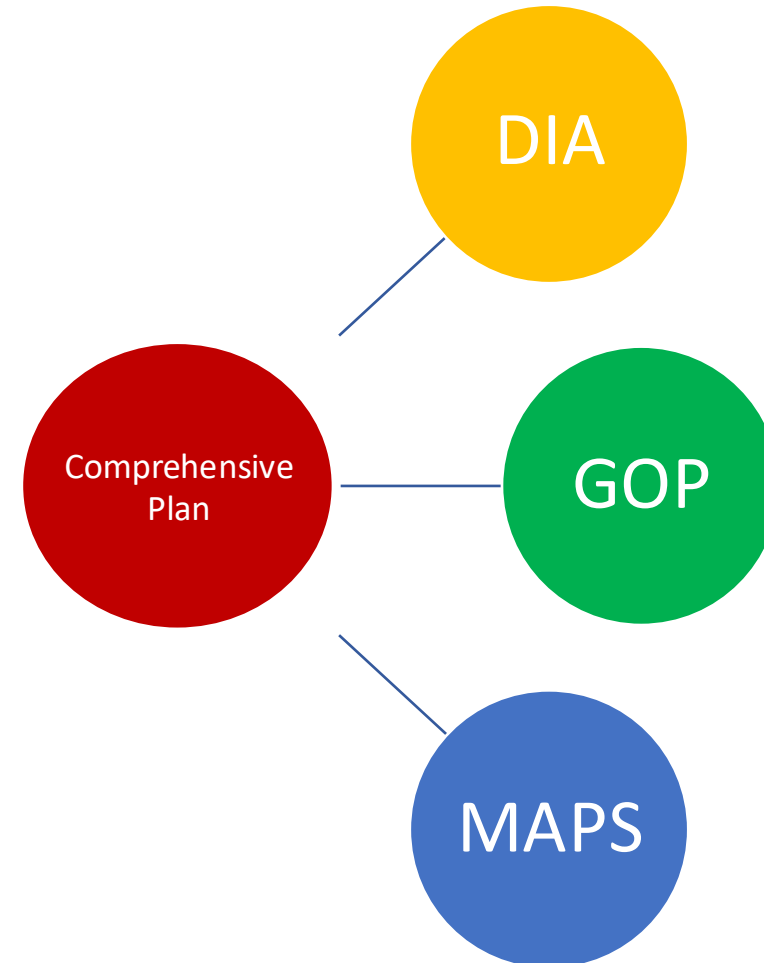


- “The constitution for all future development . . .” - *Citrus County v. Halls River Development*, 8 So. 3d 413, 420 (Fla. 5th DCA 2009); *Machado v. Musgrove*, 519 So.2d 629, 631-32 (Fla. 3d DCA 1987).
- Importance of Public Participation
 - Required by Statute “to the fullest extent possible.”
 - Adopt procedures to provide effective and meaningful participation.
 - Provide property owners with notice of all official actions that regulate the use of their property.
- Development that is inconsistent with the Comprehensive Plan (consequences) – *Pine Crest v. Shidel* case (bull dozer)
- Vested Rights – What they are? What they aren’t?

Overall Components of a Comprehensive Plan (FS 163.3177)



- Physical Plan (reflects social and economic values)
- Data, Inventory and Analysis (census, transportation LOS, Water quality, infrastructure assessment)
- Mapping (land use, transportation, environment, historic areas, etc.)
- Goals, Objectives, and Policies Mid and Long Range (5/10/20 years)
- Consistency with the Elements



Comprehensive Plan [link](#)

Each local government in Florida is required to adopt a comprehensive plan. Once this plan is adopted and found to be “in compliance” by the State planning agency, the Department of Community Affairs, all actions related to planning and growth management, including the regulation of land use and development, must be consistent with the comprehensive plan.

- Chapter 1: Future Land Use
- Chapter 2: Traffic Circulation
- Chapter 3: Housing Element
- Chapter 4: Sanitary Sewer
- Chapter 5: Solid Waste
- Chapter 6: Stormwater
- Chapter 7: Potable Water
- Chapter 8: Groundwater & Aquifer Recharge
- Chapter 9: Conservation Element
- Chapter 10: Recreation and Open Space
- Chapter 11: Intergovernmental Coordination
- Chapter 12: Capital Improvement
- Chapter 13: Property Rights Element

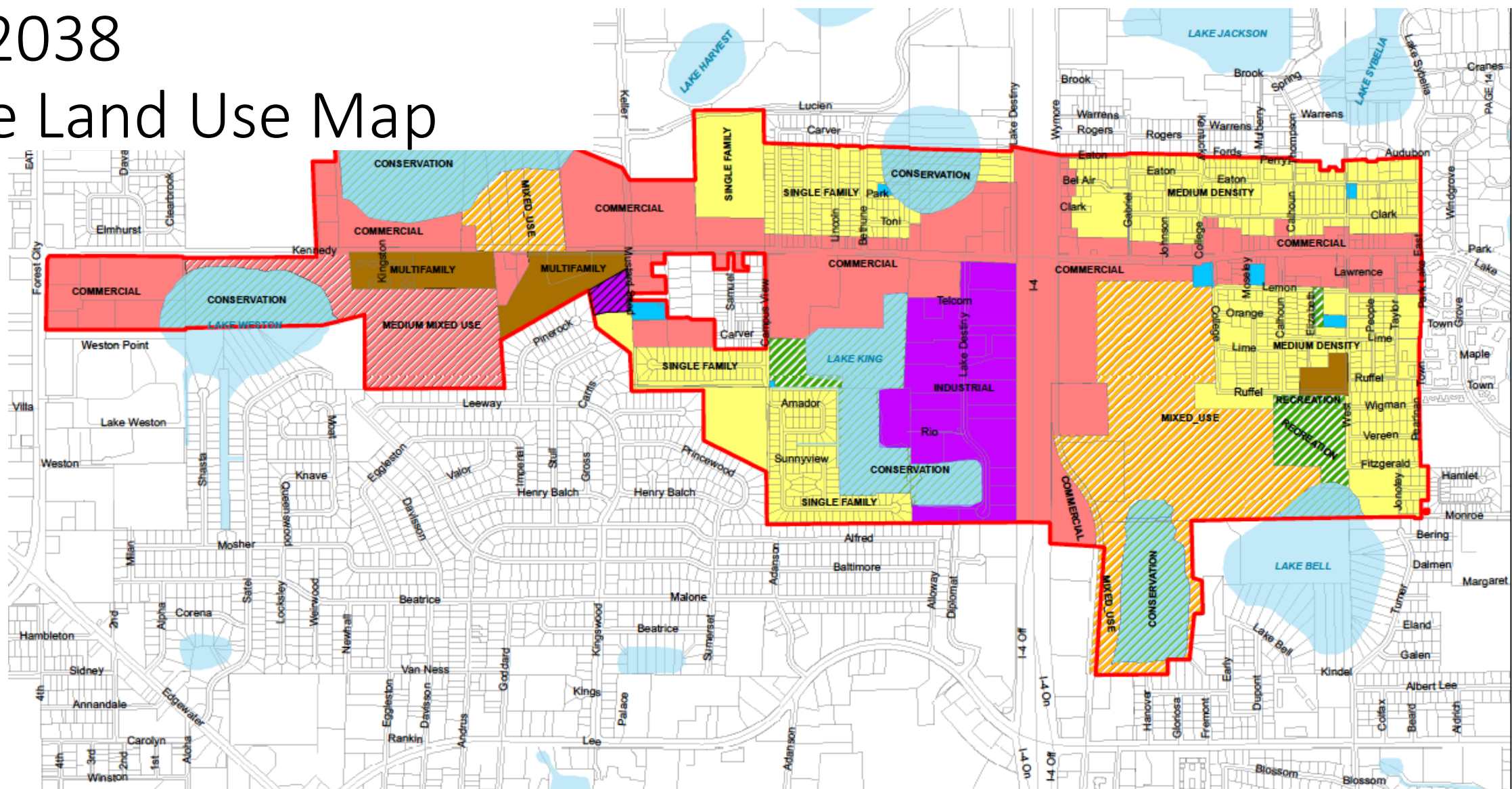
TOWN OF EATONVILLE 2018-2038 COMPREHENSIVE PLAN AMENDMENT: GOALS, OBJECTIVES AND POLICIES BASED ON THE EVALUATION AND APPRAISAL REPORT



Prepared by
Solin and Associates, Inc. & Staff

Ordinance #2018-01
Adopted December 18, 2018

2018-2038 Future Land Use Map



TOWN OF EATONVILLE FUTURE LAND USE 2018-2038

FLUM 2018-2038

COMMERCIAL

MEDIUM MIXED USE

CONSERVATION

INDUSTRIAL

MIXED_USE

PUBLIC

RECREATION

LOW DENSITY

HIGH DENSITY

0 0.175 0.35 0.7 Miles



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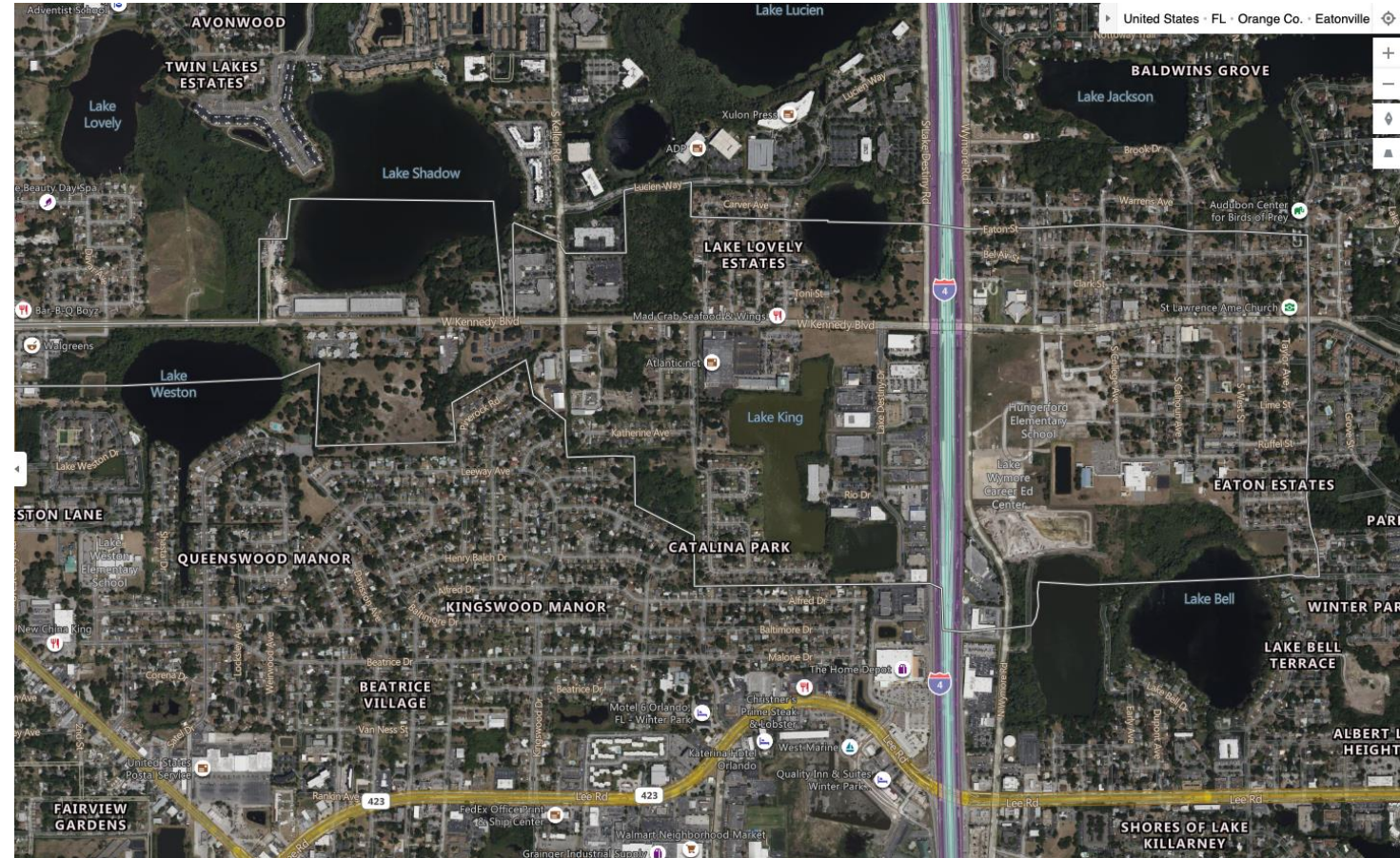
ZONING, SPECIAL EXCEPTIONS & VARIANCES

Presented by Tara Salmieri and Cliff Shepard

ZONING STANDARDS



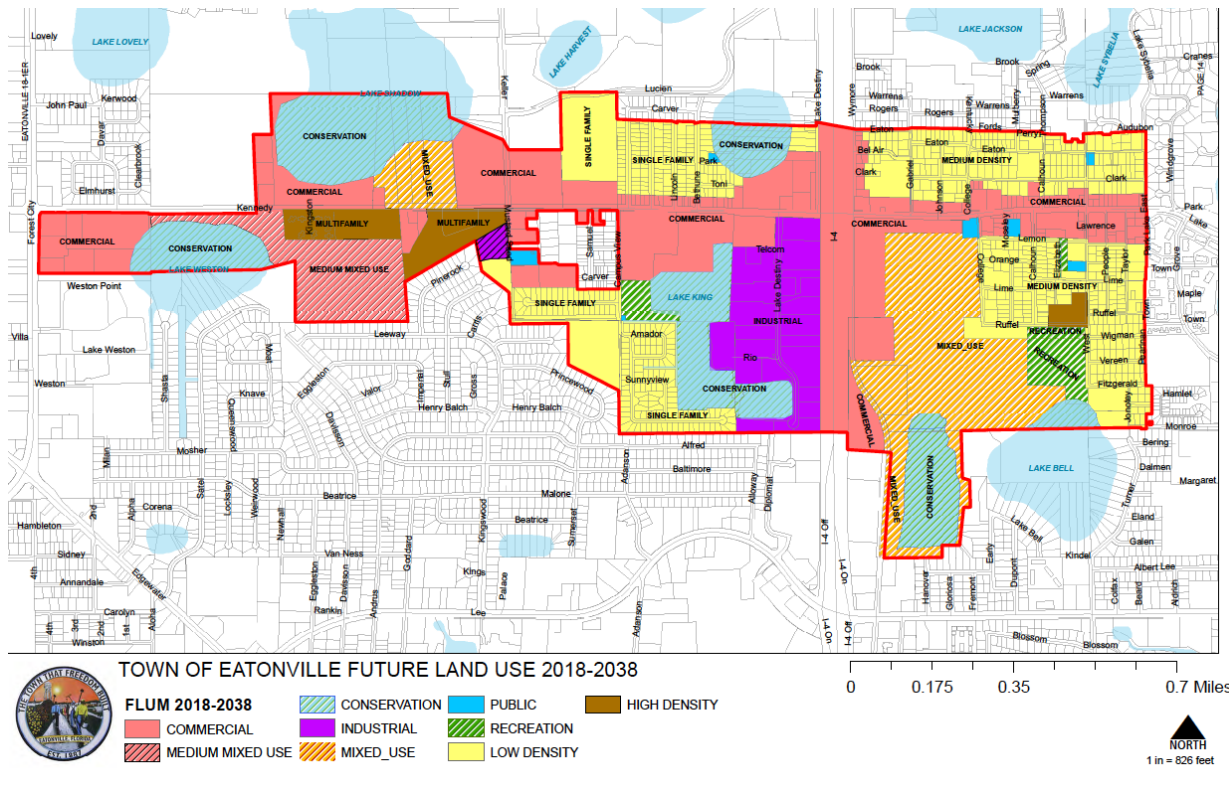
- COMPREHENSIVE PLAN
- LAND DEVELOPMENT CODE
- REZONING
- SPECIAL EXCEPTIONS
- VARIANCES



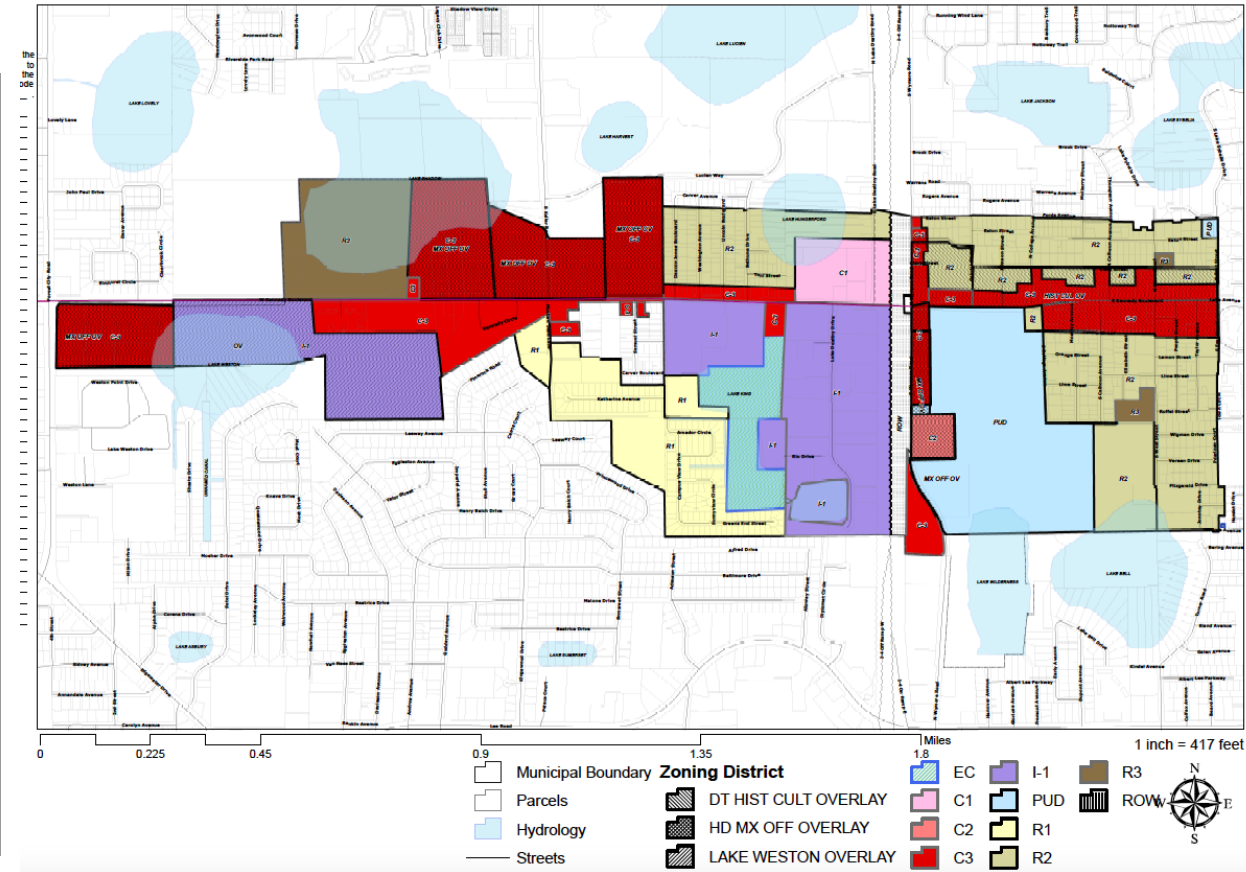


Land Use Map and the Zoning Map

Town of Eatonville Official Zoning Map



Land Use Map (Comprehensive Plan)



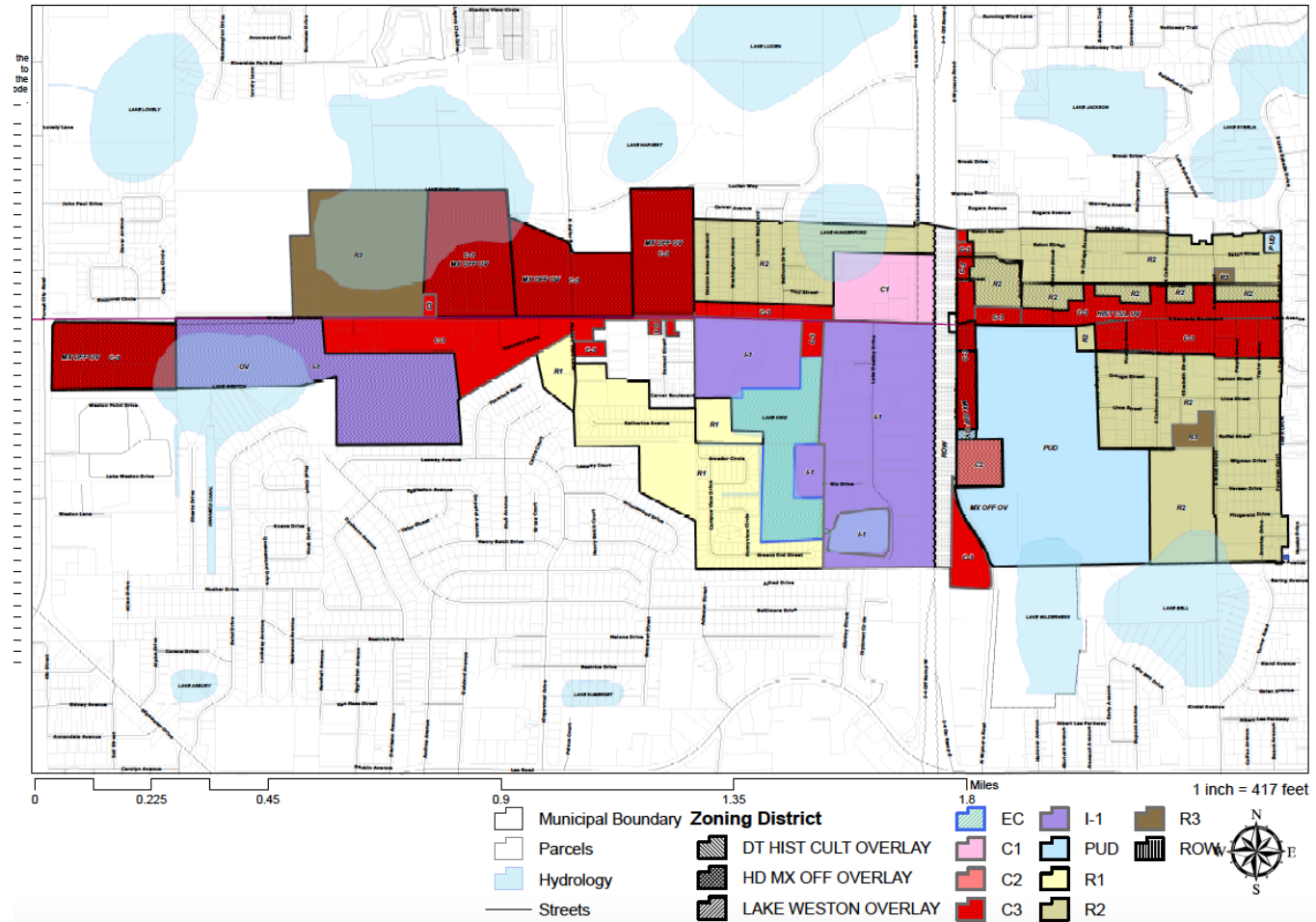
Zoning Map (Land Development Code)



Zoning Standards

- Zoning is the division of the town into districts for the purpose of regulating the use of private land.
- Town has authority
- Required to be consistent with the Comprehensive Plan
- Police Power, based on protection of the public health, safety or welfare.
- Rational Nexus to promote a public purpose (link to the comprehensive plan)

Town of Eatonville Official Zoning Map



Zoning Code Standards

Town of Eatonville Municode

Zoning provides
requirements (examples):

-Establishes Districts

-Use

-Landscape/Fence

-Signage

-Parking

-Site Plan requirements

-Subdivision/Plat

 Eatonville, FL

Search or jump to

Eatonville, Florida - Code of Ordinances / Subpart B - LAND DEVELOPMENT CODE

VERSION: SEP 29, 2022 (CURRENT) ▾

- CODE OF THE TOWN OF EATONVILLE, FLORIDA
 - SUPPLEMENT HISTORY TABLE
- PART I - CHARTER
 - CHARTER COMPARATIVE TABLE - LEGISLATION
- PART II - CODE OF ORDINANCES
 - Subpart B - LAND DEVELOPMENT CODE**
 - Chapter 42 - GENERAL PROVISIONS
 - Chapter 44 - ADMINISTRATION
 - Chapter 46 - FLOOD DAMAGE PREVENTION
 - Chapter 48 - HISTORIC PRESERVATION
 - Chapter 50 - MINIMUM PROPERTY STANDARDS
 - Chapter 52 - SIGN REGULATIONS
 - Chapter 54 - SITE PLAN
 - Chapter 56 - STORMWATER MANAGEMENT
 - Chapter 58 - SUBDIVISION REGULATIONS
 - Chapter 60 - SUPPLEMENTAL ZONING DISTRICT REGULATIONS

[< Sec. 41-34. - Board of adjustments and appeals.](#)

Subpart B - LAND DEVELOPMENT CODE

Chapter 42 - GENERAL PROVISIONS

Sec. 42-1. - Short title.

Sec. 42-2. - Application.

Sec. 42-3. - Rules for interpretation of terms.

Sec. 42-4. - Definitions.

Sec. 42-5. - Violations and penalties.

Sec. 42-6. - Severability.

Sec. 42-7. - Repeal of conflicting regulations.

Sec. 42-8. - Interpretation.

Sec. 42-9. - Fees and charges.

Chapter 44 - ADMINISTRATION

ARTICLE I. - IN GENERAL

Secs. 44-1—44-18. - Reserved.

ARTICLE II. - COMPREHENSIVE PLANNING

Sec. 44-19. - Relationship to comprehensive plan.

Sec. 44-20. - Request for determination.

Sec. 44-21. - Plan amendment procedures.

Sec. 44-22. - Administrative procedures.

Sec. 44-23. - Administrative responsibilities.

Sec. 44-24. - Administrative process.

Secs. 44-25—44-51. - Reserved.

ARTICLE III. - BOARDS, COMMITTEES, COMMISSIONS

DIVISION 1. - GENERALLY

Secs. 44-52—44-75. - Reserved.

DIVISION 2. - PLANNING BOARD

What is a Rezoning?

- Who can apply for rezoning?
 - Property Owner/Representative
 - Local Government
- Burden of Proof:
 - The local government can initiate rezoning of an area, but cannot target the rezoning of an individual property.
 - The property owner must prove with **competent substantial evidence** that the proposed rezoning is consistent with the comp plan and that the application complies with all code requirements.
 - The burden then shifts to the local government (if it disagrees) to demonstrate that maintaining the existing zoning accomplishes a legitimate public purpose and is not arbitrary, discriminatory or unreasonable.



Zoning district	Land Use Category							
	R-1	R-2	R-3	C-1	C-2	C-3	I-1	PUD
Single-family (existing)	X	X						
Low density single-family	X							X
Multifamily			X					X
Planned commercial				X				X
Planned office				X				X
Controlled commercial/office				X	X	X		X
Retail/offices						X		
Planned industrial							X	X
Institutional	X	X	X	X		X		X
Parks/community center	X	X	X					X

Special Exceptions



- Specific criteria is outlined, by Zoning District AND Chapter 44 Administration, Article IV Special Exception uses, [link](#) here.
 - **Planning Director** – Reviews the request against the specific criteria as outlined in the LDC for that zoning district.
 - **Town Attorney** - Prior to the planning board considering an application for a special exception, the town attorney shall render an opinion as to whether the special exception application is in fact a special exception, under the provisions of this chapter and is within the province of the planning board. Consideration of an application for a special exception by the planning board after a receipt of an opinion from the town attorney that the application is not within the province of the planning board, as herein defined, shall constitute a grievance as provided for in section 44-116. Repeated considerations of the planning board under these circumstances shall constitute cause for removal as provided for in section 44-110.₪

Special Exception Review

1. Planning Board
(Review/Recommendation)
2. Town Council (Renders the Decision)

RECOMMENDATION

The _____ will provide one of the following for _____:

- (a) Recommendation of denial
- (b) Recommendation of approval
- (c) Recommendation of approval with conditions
- (d) Recommendation of approval in part, with or without conditions, and denial in part.

1) AUTOMOBILE REPAIR

CONDITIONS
(YES: MEET CONDITIONS, N/A ,
AND NO DOES NOT MEET)

- | | |
|--|-----|
| a. All repair work and permanent storage of materials merchandise and lubrication repair and servicing equipment shall be conducted within the principal building. . | YES |
| b. No operator shall permit the storage of motor vehicles for a period in excess of 24 hours unless the vehicles are enclosed in the principal building. | |
| c. Service or customer vehicles shall be parked on the premises in a manner that will not create traffic hazards or interfere with vehicular maneuvering area necessary to enter or exit the site | |
| d. No outdoor work shall be performed except in areas designated for such activity on an approved site plan. Such areas shall be fenced, walled and screened to minimize on and off-site noise, glare, odor, or other impacts. | |
| e. Additional buffering and screening may be required where such use is located in close proximity to residential or retail commercial uses. | |
| f. Additional uses, such as RV/boat storage and vehicle sales, are permitted in conjunction with this use, provided that they are permitted in the zoning district and all conditions are satisfied. | |
| g. Must have a publicly advertised community meeting prior planning and zoning board. | |

EXAMPLE ONLY

Variance



A variance is an exemption granted from certain land development regulations where literal enforcement of such regulations would result in an unnecessary hardship. In reviewing a variance decision, a court will review whether there is competent substantial evidence in the record to support whether the ALL variance review criteria in the applicable code have been met. Chapter 44, Article V. Variances [here](#)

1. Describe the special conditions and circumstances that exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures, or buildings in the same zoning district.
2. Describe how special conditions and circumstances that currently exist are not the result of the actions of the applicant or petitioner.
3. Explain how the granting of the variance request would not confer on the applicant, or petitioner, any special privilege that is denied by this Article of the LDC to other lands, buildings, or structures in the same zoning district.
4. Describe how the literal interpretation of the provisions of the zoning regulations would deprive the applicant, or petitioner, of rights commonly enjoyed by other properties in the same zoning district and would work unnecessary and undue hardship on the applicant or petitioner.
5. Describe how the requested variance is the minimum variance that will make possible the reasonable use of the land, building, or structure.
6. Describe how the granting of the variance will be in harmony with the general intent and purpose of the zoning regulations and will not be injurious to the neighborhood, or otherwise detrimental to the public welfare.



Variances are Supposed to be Hard to Get

- Variances are not about whether your neighbors object.
- “Hardship” cannot be self-created.
- Variance must be in harmony with the general plan of zoning for the area.
- No reasonable legal use of property can be made without the variance.

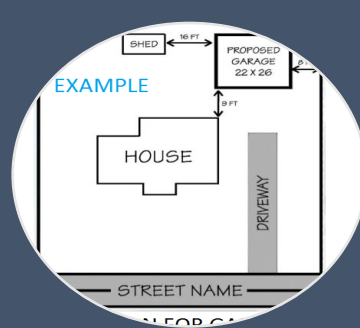
Process for Development



**Development
Agreements**



Plat



Site Plan



**Building
Permit(s)**



**Development
begins**



Development Agreements

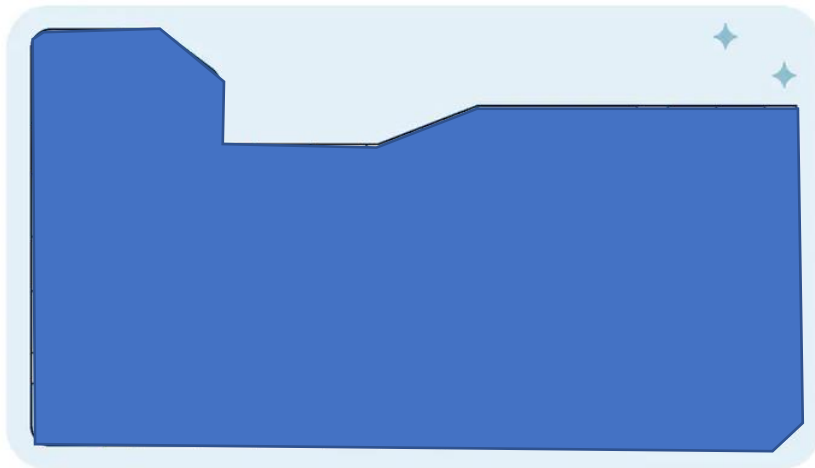


A local government may enter into development agreements with landowners or developers for the provision of infrastructure or other actions of public benefit related to a land development. These agreements are typically associated with large scale development and are created during the development review process.

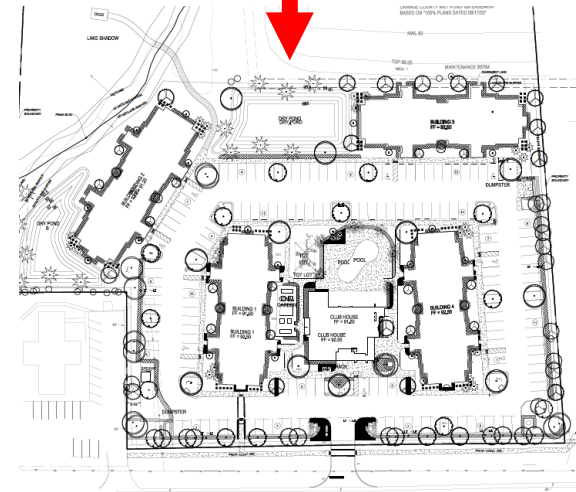


Plat & Site Plan

A **plat** when a landowner divides land into smaller parcels.



Site Plan provides specific details required by the LDC and various agencies (FDEP, OC, FDOT)



Plat Review



- 1- Subdivides Land
- 2- Name the overall area (subdivision name/business park)
- 3- Legal boundaries of parcels
- 4- Identifies roadways, parks
- 5- Provides common areas

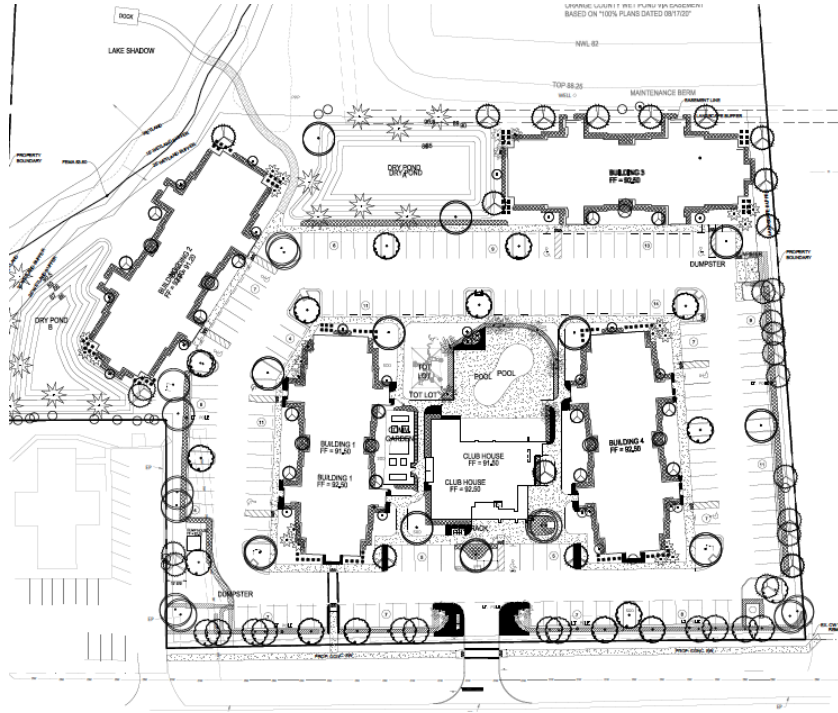
Civil Engineer
Review (CPH)

Planning Review
(ensure
LDC/Comp plan
will be met &
DA)

Planning Board

Town Council

Site Plan Review



- Building Foot-prints
- Landscape
- Lighting
- Parking
- Open space/recreation
- Lists variances
- Uses
- Any conditions of approval

Civil Engineer Review (CPH)

- Infrastructure review

Other Agencies

- Health Dept
- Fire
- utilities
- transportation

Planning Review (ensure LDC/Comp plan will be met & DA)

Planning Board

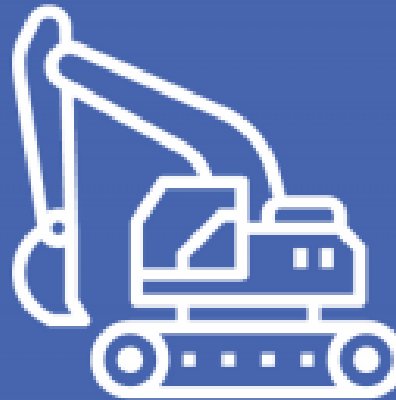
Town Council



Building Permits & Construction



Florida Building Code
(universal); electrical,
plumbing, structural



Construction meetings
Inspections

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Legal Approach



- Planning Board as LPA
- The Difference Between Legislative and Quasi-Judicial Hearings and Decisions
- Relationship Between Comp Plan and LUDC
- Characteristics of Quasi-Judicial Decisions
- *Ex Parte* Communications and Quasi-Judicial Bias
- Findings of Fact
- Best Practices

Planning Board as LPA



- LPA – Local Planning Agency
- Fla. Stat. § 163.3174
- Responsible to conduct comprehensive planning program, including:
 - ✓ *preparing plan or plan amendment after hearings to be held after public notice*
 - ✓ *making recommendations to the Town Council regarding adoption or amendment of the plan*
 - ✓ *monitoring/overseeing effectiveness of plan (EAR process)*
 - ✓ *reviewing LUDCs for consistency*
 - ✓ *other tasks as assigned by Town Council*



Setting Policy = Legislative

- Adopting or amending the Comprehensive Plan
- Includes large and small-scale plan amendments
- Adopting or amending Land Use Development Code (LUDC)
- All legislative (also known as quasi-legislative) decisions in land-use practice involve setting policy



Legislative Hearing Process

- Broad notice (*i.e.* posted agenda, newspaper publication)
- Wide-ranging public hearing, including consideration of pure preferences and opinions, conjecture and assumptions
- Presentation of evidence: anything relevant
- Substantial discretion: Board as policy-makers
- Can take a public or private position ahead of the hearing - *Izaak Walton League of America v. Monroe County*, 448 So.2d 1170 (Fla. 3rd DCA 1984).

Fairly Debatable Standard of Review



- There must be a reasonable basis to support the action.
- Very deferential standard.
- Akin to a bar debate.
- The Court:
 - may not second guess the wisdom of the local government's action; and
 - must affirm if there is any reasonable basis for the decision and that there are no constitutional violations.



Applying Code and Comp Plan = Quasi-Judicial

- Application of the Code and/or the Comp Plan to specific properties
- Cannot create new policies to govern the decision (legislative process)
- Site-specific application of Land Development Regulations (Examples: Rezoning, site plans, conditional uses, variances, administrative adjustments, plats, special exceptions, licenses, permits)
- Key elements:
 - finding of facts regarding the specific proposal
 - exercise of judgment and discretion in applying adopted policies to the specific situation



Quasi-Judicial Hearing Process

- Notice to owner and affected persons
- Sworn testimony – swear or affirm (all at once, or one at a time)
- Parties (City, applicant, affected persons) have the right to call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any relevant matter, and rebut evidence
- Applicant and affected parties entitled to more than the 3 minute rule because their rights are uniquely affected
- Board acting as judges



Hearing Process Continued...

- Where evidence conflicts, the Board has the responsibility of deciding how much weight to accord each piece of evidence.
- Continued hearings: must be present for all or must review the complete record of portions missed.
- Record-keeping is important – keeping all things exhibits and things handed up to the Clerk or shown to the Board.
- Review is on the record. No ability to create additional evidence after decision is made.
- Board should give due consideration to the professional judgement of your zoning and planning staff, considering their training and experience. But the question of what the Code means is a question of law for which the Board must make its own decision, as the creator of the law.

Affected Parties?

Objectors With Standing to Sue



- A person who has a **legally recognizable interest** which is or will be affected by the action of the zoning authority in question has standing.
- **May be shared in common with other members of the community** (an entire neighborhood), but not every resident and property owner of a municipality can, as a general rule, claim such an interest.
- **Must be a definite interest exceeding the general interest** in community good shared in common with all citizens.
- **Relevant factors:**
 - **proximity** of property to the property to be zoned or rezoned,
 - **character of the neighborhood**, including the existence of common restrictive covenants and set-back requirements
 - **type of change** proposed
 - **entitlement to receive notice** under the zoning ordinance is a factor, but is **not controlling**.

Burden of Proof for Quasi-Judicial Matters



- The **burden is on the applicant** for a rezoning, special exception, conditional use permit, variance, site plan approval, etc. to demonstrate the application **complies with the requirements** of the applicable ordinance and that the use sought is **consistent with the applicable comprehensive plan**.
- The **burden then shifts to the government** to present **competent substantial evidence** that the application does not meet applicable criteria under the code and that maintaining the status quo on the property **accomplishes a legitimate public purpose**, and is not arbitrary, discriminatory, or unreasonable.
- Quasi-judicial decisions generally are based on their facts and do not set precedents.

Variances – Applicability



- A variance may be granted by the board of adjustment to deviate from the terms of the Land Development Code.
- A variance shall not be granted to permit or expand a use not permitted generally or by special exception in the applicable zoning classification.
- A variance may be granted only if the applicant meets all of the criteria listed in subsection 44-177.
- No nonconforming use of neighboring land, structures, or buildings in the same zoning classification and no permitted use of lands, structures or buildings in other zoning classifications shall be considered grounds for the authorization of a variance.
- Inconveniences or financial burdens that can be resolved by means other than a variance shall not constitute evidence of unnecessary and undue hardship and shall not alone be considered grounds to justify granting a variance.
- State and/or federal laws or requirements may not be varied by the town.

Variance Applicant Must Prove:



- That the variance is in fact, a variance as set forth within this article and within the province of the board of adjustment upon the opinion of the town attorney.
- That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.
- That the special conditions and circumstances do not result from the actions of the applicant.
- That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, buildings, or structures in the same zoning district.

Variance Standards – cont'd.



- That literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this article and would work unnecessary and undue hardship on the applicant.
- That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- That the granting of the variance will be in harmony with the general intent and purpose of the chapter, and that such variance will not be detrimental to the public welfare.



Competent Substantial Evidence

- ✓ Evidence a reasonable mind would accept as adequate to support a conclusion
- ✓ Substantial Competent Evidence from lay witnesses/residents must be “fact based”
- ✓ Subjective preferences (“love it”/“hate it”) are not fact based and do not constitute Substantial Competent Evidence
- ✓ Conjecture or assumptions are irrelevant to the issues

Competent Substantial Evidence



Example: Harm to Property Values

- Is there testimony from an appraiser about the impacts of a similar project?
- Is the similar project truly similar?
- Does the evidence in the record reflect reduced values, or are you just relying on personal knowledge?
- Don't just tell, **SHOW**. What may be obvious to local citizens will not be known by a reviewing court unless its in the record.
- Property owners testifying from personal knowledge of appraisals, sales prices or cancelled contracts resulting from similar development or from the pending application should be supported with the documents themselves.



Findings of Fact

- The Fla. Supreme Court ruled that local government “will NOT be required to make findings of fact” to support its decision on an application for rezoning.
- However, written findings of fact are a good idea in case of appeal to support the local government’s quasi-judicial decisions because they:
 - Are essential to effective strict judicial scrutiny of quasi-judicial decisions.
 - Greatly reduce the possibility of arbitrary or politically-motivated rezoning decisions, thereby providing protection for property rights.
 - Ensure mindfulness of consistency with Comp Plan requirement; if local government makes written findings of fact to support their consistency determinations, local government officials will focus more closely on the relationship between proposed rezoning and goals, objectives and policies of the Comp Plan.

Ex-Parte Communications



- An ex parte communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with a Board member about the issues in the case **without the other parties' knowledge.**
- Example: A Board member meets with the applicant or an opponent without the public present.
- **Attributes of ex-parte communications on local quasi-judicial matters:**
 - ✓ Occurs outside the official hearing
 - ✓ Usually one-sided (opposition or support)
 - ✓ Does not allow the other side an opportunity to respond
 - ✓ Can be in any form – written, verbal, electronic, etc.

Town should adopt disclosure resolution or ordinance



- Under F.S. § 286.0115, ex-parte communications are **not presumed prejudicial if disclosure is made** at the beginning of the public meeting pursuant to a locally adopted ordinance or resolution.
- Must disclose the following information for the record:
 - The subject matter of the communication and the identity of the person, group or entity with whom the communication took place
 - Written communications should be submitted into the record
 - Disclose the existence and nature of any investigations, site visits and expert opinions received



Bias in Quasi-Judicial Hearings

- Bias (a **predetermined opinion that is not susceptible to change**), undisclosed ex parte communications, and close family or business ties can **disqualify Board members from participating or voting** as a matter of due process – even if there is no statutory conflict of interest
- Those participating in quasi-judicial proceedings have a right to expect **impartial decision-making on the basis of the evidence presented**. Decision-makers should **not take a position** on a quasi-judicial application until each party (City, applicant, affected person) has made its presentation at the hearing. Doing so deprives a party of its constitutionally protected right to a fair hearing.
- Board members should **not** actively involve themselves in efforts to support proponents or opponents of a quasi-judicial land development action. To do so could subject the City and the individual Board member to a lawsuit.

Voting Conflict of Interest Statute Allows Abstention for Quasi-Judicial Bias



- Section 286.012, Fla. Stat. **Voting requirement at meetings of governmental bodies.**—A member of a ... municipal governmental ... commission... who is present at a meeting of any such body at which an official decision... is to be taken or adopted **may not abstain from voting** in regard to any such decision...; and a vote shall be recorded or counted for each such member present, **unless**, with respect to any such member, there is, or appears to be, a possible **conflict of interest** If there is, or appears to be, a possible conflict. . . , the member shall comply with the disclosure requirements of s. 112.3143.... If the official decision, ruling, or act occurs in the context of a quasi-judicial proceeding, a member may abstain from voting on such matter if the abstention is to assure a fair proceeding free from potential bias or prejudice.



QJ Hearing Standard of Review

- Narrow and limited review by certiorari on three issues:
 - Whether procedural due process was accorded;
 - Whether the essential requirements of the law were observed; and
 - Whether the decision was supported by competent substantial evidence
- Petitions for writ of certiorari must be filed within 30 days of rendition of the development order to be reviewed.
- Denials must cite to the legal authority for the decision.

Best Practices for Quasi-Judicial Decisions



- **BE AN OBJECTIVE DECISION-MAKER**
- Do not prejudge the case - avoid making up your mind beforehand.
- Provide objective decisions based on all the facts and evidence presented.
- Follow your community's plan and the local zoning codes, and local land development codes.
- Base decision on the information available to you at the meeting, including the staff report, the site visit, relevant information presented at the meeting, and public comment.
- **MAKE THE BEST DECISION POSSIBLE BASED ON ALL OF THE INFORMATION PRESENTED TO YOU**

More Best Practices



- **BE AN EFFECTIVE BOARD MEMBER**
- Prepare well for the meetings
- Keep the meeting tempo the same at the beginning and end
- Seek to understand each other's positions and opinions
- Be civil to each other so the public will be civil to you
- Have a bias for action
- Explain your rationale, but don't lecture
- Make your final action clear to the public



More Best Practices

- **MAKE SOUND DECISIONS & DEFENSIBLE MOTIONS**
 - Ask applicant if he/she agrees. If not, why not? Verify understanding and assumptions before voting. Allow rebuttal as needed.
 - Restate and discuss criteria to support the motion.
 - Follow competent substantial evidence, not the Roar of the Crowd
 - Repeat the “gift wrapped” motion provided by staff if you agree
 - Motions different than staff-recommended motion
 - Develop defensible public record based on evidence in the record
 - May not be arbitrary
 - Denials must provide a reason, in writing, to the applicant



Even More Best Practices

- Adding Conditions of Approval?
 - Make sure they do not overlap or conflict with the staff-recommended conditions
 - Should relate to the criteria for approval
 - Rational nexus test
 - Rough proportionality test
 - Section 70.45, Fla. Stat., exposure for unlawful exaction

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Questions?

