

EXHIBIT A

REVISIONS TO CHAPTER 15 ZONING

DIVISION 13 ORGANIZATION AND ENFORCEMENT

SECTION 15.02.722 GENERAL STATUTES, ORDINANCE, AND RULES APPLYING TO THE BOARD OF ADJUSTMENT

Items stricken are shown in red and items added are underlined and shown in blue.

“Sec. 15.02.722 - General statutes, ordinances, and rules applying to the board of adjustment

(a) *Governance*. The board of adjustment, hereinafter referred to as "the board," shall be governed by state statutes, local rules and regulations, and the City's Code of Ordinances.

(1) Upon taking office, all board members and alternates shall familiarize themselves with applicable state law, local rules and regulations, and the City's Code of Ordinances, and, while in office, maintain such knowledge in the conduct of board affairs.

(b) *Duties of the board*. The board has three fundamental powers:

(1) To hear appeals from individuals contesting the decision of the zoning administrative official;

(2) To hear and decide special exceptions to this article; and

(3) To grant variances to the terms of this article's text where unusual conditions make its literal enforcement unjust.

(c) *Location of office*. The official location of the office of the board is: Leon Valley City Hall.

(d) *Establishment, composition, appointments*.

(1) The board is established consisting of five members and four alternates.

(2) The board members and alternates must be citizens and residents of the city who meet the same qualifications that are required to obtain a voter registration certificate to vote in city municipal elections.

(3) Appointment of board members and alternates shall be made by the mayor of the city and passed and approved by the city council. In specifying alternate members, the appointment shall also specify the order in which the alternates are to serve in the absence of a member.

(4) In the event that any person(s) appointed by the mayor is not approved by a majority of the city council, or if a vacancy occurs, the mayor shall make another appointment within 45 days, subject to approval by a majority of the city council.

(5) Alternates for the board do not have status as voting members unless directed by the chairman of the board to sit as a voting member due to the absence or nonvoting status of a member. This provision is not intended to restrict in any way the nonvoting participation of alternates, to the extent allowed by the chairman.

(e) *Terms of members.*

(1) The term for all board members and alternates is two years, beginning on June 1st, of every year ending in an even number (0, 2, 4, 6, 8).

(2) The term of all board members and alternates expires on May 31 of every year ending in an even number (0, 2, 4, 6, 8).

(3) Any appointment of a board member or alternate is only for the remainder of a term, regardless of the point in the term at which the appointment is made.

(f) *Regular election of chairman, vice-chairman and second vice-chairman.*

(1) As the first item of new business at the first meeting of the board following mayoral appointment/reappointment, the board shall elect a chairman, vice-chairman and second vice-chairman. If there is no meeting, or if there is not a minimum of four members or alternates present at such a meeting prior to June 15th in such year, city council may appoint a chairman and vice-chairman to serve until a meeting occurs at which time an election can be held.

(2) The former chairman, vice-chairman or second vice-chairman, in that order, and if reappointed to the board, may remain in office until their successor(s) take office at the next meeting following their appointment, unless a replacement is appointed by city council.

(g) *Succession of vice-chairman to office of chairman; special election.* If the chairman resigns his office or is no longer a member of the board, the vice-chairman shall succeed him in office for the remainder of the term. If the vice-chairman resigns his office, is no longer a member of the board, or succeeds to the chairman's office, the second vice-chairman shall succeed him in office for the remainder of the term. If any of the above do not apply, a special election shall be held at the next meeting of the board to select a chairman, vice-chairman and/or second vice-chairman to complete the term, provided that if such meeting precedes the regular election by three months or less, and any duties to be performed by the vice-chairman or the second vice-chairman can be performed in a satisfactory manner, the board may permit the office of vice-chairman or second vice-chairman to remain vacant for that period.

(h) Duties of chairman, vice-chairman or second vice-chairman; appointment of temporary chairman to preside at meetings.

(1) If present and able, the chairman shall preside at all meetings and hearings. If the chairman is absent or unable to preside, the vice-chairman shall preside. If the vice-chairman is also absent or unable to preside, the second vice-chairman shall preside.

(2) In accordance with these and other applicable rules, the chairman or presiding officer, acting as chairman, shall decide all points of procedure or order, unless otherwise directed by a majority of the members in attendance, on a motion duly made and passed. He shall maintain order and decorum, and to that end may order removal of disorderly or disruptive persons.

(3) The chairman or officer presiding in his absence shall determine the absence of any member and direct the seating of an alternate(s) in the order determined by the appointment of alternates by the mayor and city council.

(4) If oaths are to be administered to a witness in a particular case, that oath shall be administered by the chairman or officer presiding in his absence. The necessity of administering an oath to a witness shall be determined by the chairman or the officer presiding in his absence. However, if it is determined an oath shall be administered to a witness in a particular case, then the same oath shall be administered to all witnesses testifying in that particular case.

(5) The chairman may delegate duties as he sees fit to any member or alternate. In the case of the absence or the incapacity of the chairman, the vice-chairman shall perform any or all duties of the chairman, whether or not delegated.

(6) Subject to the rules of this article and further instructions from the board, the chairman shall direct the official business of the board, guide the work of city staff as it relates to the affairs of the board and exercise general disciplinary power.

(7) The chairman may delegate members of the board to make personal inspections when necessary for proper consideration of cases and shall appoint such committees as may be found necessary.

(8) The chairman shall report to the board on all official transactions which have not otherwise come to the attention of the board. The chairman shall also make or cause to be made, any reports concerning the affairs of the board required or requested by the city council.

(i) Causes for removal from the board. Causes for removal of members or alternates of the board by the city council shall include particular malfeasance, misfeasance, or nonfeasance generally, and in particular the following:

(1) Failure to maintain reasonable familiarity with state statutes and local ordinances and rules affecting the board, or failure to be governed thereby, as required in section 15.02.722(a); and/or

(2) Failure to disclose conflict of interest for purposes of disqualification when a member has personal or monetary interest in the matter involved or will be directly affected by a decision of the board.

(j) Resignation, generally and by absence.

(1) When members or alternates of the board propose to resign, if reasonably feasible, they shall give notice of their intent to the chairman, making the date of resignation effective in such a manner as to allow time for appointment of replacement.

(2) Failure to attend three consecutive meetings or three of any seven consecutive meetings without the recorded consent of the chairman, shall be construed as resignation from the board by absence. This provision shall apply to both members and alternates of the board.

(k) Vacation of office. When a member or alternate of the board dies or resigns (including resignation by absence), the chairman shall promptly indicate to the mayor that a vacancy exists. When a member becomes incapacitated for office permanently, or for what appears to be a protracted period, or moves from the jurisdiction, or becomes for any other reason no longer qualified for office and fails to resign, the chairman shall cause any necessary investigation to be made. Based on that investigation, the chairman may declare the office vacant and shall promptly indicate to the mayor that a vacancy exists.

(l) Fees and application procedure.

(1) *Fees.* Shall be as established ~~by ordinance~~ [as mandated in Appendix A of the Leon Valley Code of Ordinance](#). Fees are to accompany application for public hearing before the board of adjustment.

(2) *Application.* The applicant may request a public hearing before the board, for either a request for variance, special exception and/or appeal of zoning administrator's decision to this article.

(A) Completed application(s) must be submitted to the [planning and](#) zoning administrator and all appropriate fees must be paid before a public hearing date will be scheduled with the board chairman.

(m) Board administrator. The zoning administrator shall serve as administrator for the board.

(1) The board administrator, or his deputies or assistants, shall have the following duties and responsibilities in relation to requests to the board:

(A) Attend to all correspondence of the board;

- (B) Send out, or cause to be published, all required notices;
- (C) Attend all meetings and hearings of the board;
- (D) Scrutinize all matters to ensure compliance with this article and these rules;
- (E) Compile all required records;
- (F) Maintain the necessary schedules, files, and indexes; and
- (G) Generally, perform or supervise all clerical work of the board.

(2) The board administrator shall maintain a docket book or log which shall be kept posted to date. The docket shall include the case number, name of applicant, location of premises by street number or legal description, nature of the case and the final disposition of the case. All continuances, postponements, dates of sending notices, other steps taken, and acts done should be noted in the docket.

(3) The board administrator shall maintain a minute book which shall be kept posted to date. In the minute book shall be recorded the proceedings of the board showing attendance, any disqualifications of members, record of examinations, all other official action, and the vote of each member voting on every question. The minutes of the board shall become official upon majority vote of the board, and shall be a public record, kept in city hall offices.

(4) The board administrator or his authorized deputies or assistants, shall also have the following duties and responsibilities in relation to appeals and applications to the board:

- (A) Receive all appeals and applications and examine the material submitted therewith to assure that it is complete and that required maps, plans, reports and other materials which are required and are necessary to be submitted are in good order and in sufficient number for processing and recording; and

- (B) See that this material is reviewed by all appropriate city departments and prepare a report and recommendation to be delivered in a timely manner to the board prior to consideration of the appeal or application.

(n) *Duties of legal counsel.* The city attorney, or his designate, shall provide legal advice to the board as to matters under their jurisdiction. In cases before the board, the city attorney, or his designate, may assist the board in interrogating witnesses.

(o) *Conduct of members of the board, alternates and city staff.*

(1) No member of the board, alternate or city staff member shall represent applicants or appellants on matters on which the board is to make determinations.

(2) Members and alternates of the board shall be aware of all state statutes and any city ordinances, rules or regulations related to conflicts of interest and the ethics of public officials generally.

(3) As soon as any board member, alternate or city staff member of any agency serving the board becomes aware of any potential conflict of interest in any case to come before the board, he shall notify the chairman or acting chairman of the particulars. Where the chairman finds that conflict clearly exists, he shall disqualify the board member from acting in the case, shall cause the circumstances of the disqualification to be entered in the record and make arrangements for such alternate services as are required.

(4) Where the chairman or acting chairman has reasonable doubt as to whether the facts and applicable law indicate a degree of conflict justifying disqualification or excuse from service, he shall seek advice from the city attorney or his designate. If the city attorney or his designate advises that, under the circumstances reported and applicable law conflict appears to exist, the chairman shall proceed to disqualify or excuse as provided above. If the city attorney or his designate advises that there is reasonable doubt, the chairman may either disqualify or excuse the person involved or call for a determination by the board at a public meeting.

(5) The record on any such determination by the board shall be full and complete and shall indicate the reasons supporting the decision.

(6) A member may seek disqualification from voting whenever any applicant, or his agent, has sought to influence the vote of the member on his appeal or application, other than in the public hearing.

(7) Members and alternates of the board may seek information from other members, the board administrator, city attorney or other city staff prior to the public hearing, but no member or alternate shall discuss the case with any other parties thereto prior to the public hearing. Additionally, no member or alternate shall express any bias, prejudice or individual opinion on proper judgment of the case prior to its hearing and determination. Violation of this rule shall be grounds for dismissal from the board.

(p) *Compensation.* The compensation and/or reimbursement of expenses of board members and alternates is to be specified by ordinance. In the absence of an ordinance specifying compensation and/or reimbursement, there shall be none. The absence of such an ordinance does not preclude payment by the city of certain expenses for memberships, subscriptions, educational seminars, travel and similar expenses as might be required for board members and alternates, as authorized by city council.

(q) *Meetings.*

(1) There is no requirement for regular meetings of the board. All meetings of the board are to be special meetings to be held at the Leon Valley city hall, unless

designated otherwise by the board; provided that such meetings may be held at any other convenient place if directed by the chairman in advance of the meeting or upon a finding that such other location would serve public convenience or necessity, and subject to the notice provisions as required by law.

(2) Meetings for any purpose may be held at the call of the chairman of the board, or of any combination of at least four members and alternates.

(3) If a meeting is called on a case or cases subject to notice of hearing, the required notice provisions for the hearing shall be met.

(4) Any meeting may be recessed or adjourned from day to day, or to the time of any previously announced meeting, and such recess or adjournment to a time and place certain shall not require additional public notice.

(5) If no business is scheduled before the board, or if it is apparent that a quorum will not be available, any meeting may be canceled by the chairman by giving notice to all members at least 24 hours before the time set for such meeting.

(6) All meetings of the board involving hearing of evidence and/or decisions on appeals or applications shall be public, with formal notice as required by law.

(7) Meetings for the conduct of other business of the board, including activities and reviews as may be assigned by the city council or required by ordinance, trips for viewing premises, and other similar meetings and activities, shall not require such formal public notice and hearing, but shall be scheduled at least 12 hours in advance, with the schedule posted at the office of the board.

(r) *Minimum of four members at hearings.* The alternate members of the board shall serve in the absence of one or more regular members when requested by the chairman of the board so that all cases heard by the board will always be heard by a minimum of 75% of the ~~four~~ members.

(s) *Special exceptions.* The board is hereby empowered to permit the following exceptions provided its action is in harmony with the general purpose and intent of this article and does not injure the health, safety, morals, or the welfare of adjacent property owners or residents:

(1) Permit the use of a lot or lots in an RE-1, R-1, R-2, R-3, R-4, R5, ~~R-6~~, R-7, or Planned Development District, which lot or lots is adjacent to a commercial or industrial district, even if separated therefrom by an alley or by a street, for the parking of passenger cars under such safeguards and conditions as may be desirable to protect the more restricted adjacent and nearby properties, provided no other business use is made of the lot;

(2) Grant a permit for the extension of a use into an adjoining district, where such extension would constitute a nonconforming use and where the lot upon which the

existing use is situated extends into the adjoining district and is in single ownership at the time this article is adopted;

(3) Permit the reconstruction of a building occupied by a nonconforming use provided such reconstruction does not prevent the return of such property to a nonconforming use; and

(4) Determine, in cases of uncertainty, the classification as to district of a use not specifically described in this article, provided, however, that such use shall be in keeping with uses specifically named in the district regulations.

(t) *Variance empowerment.* The board is hereby empowered to grant variances to this article upon making affirmative findings as to all criteria stated in section (bb) below relating to variances.

(u) *Limitations on special exceptions and variances.* Any special exception or variance authorized by the board shall constitute authority to authorize the issuance of a building permit, special permit, or certificate of occupancy if applied for within 180 days from the date of favorable action on the part of the board, unless the board authorizes a longer period. If the building permit, special permit, or certificate of occupancy shall not have been applied for within said 180-day period, or such extended period as the board may have authorized, then the grant of the special exception or variance shall terminate. Such termination shall be without prejudice to a subsequent application to said board in accordance with the rules and regulations regarding applications. No application to the board shall be allowed on the same piece of property prior to the expiration of six months from a ruling of the board on any application unless other property in the same block or within 500 feet thereof, within such six-month period has been altered or changed by a ruling of the board, in which case such change of circumstances shall permit the allowance of such an application but shall in no way have any force in law to compel the board, after a hearing, to grant such subsequent application, but such application shall be considered on its merits as in all other cases.

(v) *Appeals empowerment.* The board is hereby empowered to hear appeals from individuals contesting the decision of a zoning administrative official. In exercising their powers, the board may, in conformity with the provisions of this article, reverse or affirm in whole or in part, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative officer from whom the appeal is taken.

(w) *Appeals to the board.*

(1) Except as provided by Subsection (e) below, any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is not related to a specific application, address, or project:

(A) a person aggrieved by the decision; or

(B) any officer, department, board, or bureau of the municipality affected by the decision.

(1-a) Except as provided by Subsection (e) below, any of the following persons may appeal to the board of adjustment a decision made by an administrative official that is related to a specific application, address, or project:

(A) a person who:

(i) filed the application that is the subject of the decision.

(ii) is the owner or representative of the owner of the property that is the subject of the decision.

(iii) is aggrieved by the decision and is the owner of real property within 200 feet of the property that is the subject of the decision.

(B) any officer, department, board, or bureau of the municipality affected by the decision.

(3) The appellant must file with the board and the official from whom the appeal is taken a notice of appeal specifying the grounds for the appeal. The appeal must be filed not later than the 20th day after the date the decision is made. On receiving the notice, the official from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record of the action that is appealed.

(4) An appeal stays all proceedings in furtherance of the action that is appealed unless the official from whom the appeal is taken certifies in writing to the board facts supporting the official's opinion that a stay would cause imminent peril to life or property. In that case, the proceedings may be stayed only by a restraining order granted by a court of record on application, after notice to the official, if due cause is shown.

(5) The board shall set a reasonable time for the appeal hearing and shall give public notice of the hearing and due notice to the parties in interest. A party may appear at the appeal hearing in person or by agent or attorney. The board shall decide the appeal at the next meeting for which notice can be provided following the hearing and not later than the 60th day after the date the appeal is filed.

(6) A member of the governing body of the municipality who serves on the board of adjustment under Section 211.008(g) may not bring an appeal under this section.

(x) Notice of public hearing before the board. Timing and manner of publication of public notice for such hearings shall be in accordance with any requirements set forth herein and by state statute. In addition, at least ten days in advance of the hearing, notice shall

be given to parties in interest and to other persons required by the ordinance to be specifically notified.

(y) *Agenda, order of business.* The board administrator shall prepare an agenda for each board meeting. The order of business shall be as follows:

- (1) Call to order and roll call, with recording of members present and absent and indications as to whether absences are with consent of the chairman;
- (2) Action on any previous meeting for which action is required;
- (3) Continued hearings, with consideration and determination on cases as heard;
- (4) New hearings, with consideration and determination on cases as heard;
- (5) Old business;
- (6) New business; and
- (7) Adjournment.

(z) *Procedures at hearings before the board.*

- (1) At a public hearing, persons may appear or be represented by authorized agents or attorneys. Such agents or attorneys shall present competent evidence of the extent of their authorization.
- (2) All witnesses to material facts shall testify under oath, to be administered by the chairman.
- (3) The order for presenting evidence shall be as follows:
 - (A) The chairman, or such person(s) as he may direct, shall present and describe the nature of the case and evidence available to the board, including staff report;
 - (B) The applicant or appellant shall outline the nature of the request and present supporting evidence;
 - (C) Objectors may cross-examine;
 - (D) Board members and alternates may examine witnesses for the applicant's or appellant's side;
 - (E) Objectors may present evidence;
 - (F) Applicants may cross-examine;
 - (G) Board members and alternates may examine witnesses for objector's side;
 - (H) Rebuttal by applicant; and

(l) Rebuttal by objectors.

(4) The board shall not be bound by strict rules of evidence or limited to consideration of such evidence as would be admissible in a court of law, but it may exclude irrelevant, immaterial, incompetent, or unduly repetitious testimony and/or evidence. The chairman shall rule on all questions relating to the admissibility of evidence but may be overruled by a majority of the board members present.

(5) During the hearing, each side shall proceed without interruption by the other. All arguments and pleading shall be addressed to the chairman. There shall be no question or argument between individuals in the audience.

(6) The chairman, board members and alternates, counsel to the board and/or city staff may direct any question to the applicant, witnesses, or any person speaking from the audience, to bring out pertinent facts. The chairman, board members and/or alternates may call for pertinent facts from staff or make appropriate comments pertinent to the case. No board member should debate or argue with persons in the audience.

(aa) *Motions.*

(1) Any motion by a member shall require a second. After a motion has been made and duly seconded, discussion of the motion may be held for a reasonable time. Discussions by members, or by opponents or proponents of a question before the board, shall terminate whenever a member shall call a vote upon the question or whenever the chairman shall so rule.

(2) If a motion is defeated, another motion must be made, seconded, voted upon and approved by a majority of the board present and voting.

(bb) *Criteria for approval.* In making motions to approve special exceptions, variances and appeals, the motion shall state affirmative findings as to each of the criteria listed below. Similarly, in making motions to deny special exceptions, variances, and appeals, the motion shall state a negative finding as to at least one of the criteria listed below.

(1) Special exceptions:

(A) That the granting of the special exception is not contrary to the general intent of the zoning code and the public interest, and the property rights of adjoining landowners are substantially preserved; and

(B) That the special exception granted creates no new variances and does not increase existing variances.

(2) Variances: To prevail in receiving a variance, the applicant must demonstrate that a literal enforcement of the ordinance would result in unnecessary hardship. The applicant must show that the hardship is:

(A) Unique, oppressive, not common to other property, and not against the public interest;

(B) Not merely that the property cannot be utilized for its highest and best use;

~~(C) Not merely financial;~~

(C) Not self-imposed; and

(D) Not simply a hinderance to the developer's goals.

(E) In exercising its authority under Subsection (bb)(2), the board may consider the following as grounds to determine whether compliance with the ordinance as applied to a structure that is the subject of the appeal would result in unnecessary hardship:

1. the financial cost of compliance is greater than 50 percent of the appraised value of the structure as shown on the most recent appraisal roll certified to the assessor for the municipality under Section 26.01, Tax Code;

2. compliance would result in a loss to the lot on which the structure is located of at least 25 percent of the area on which development may physically occur;

3. compliance would result in the structure not being in compliance with a requirement of a municipal ordinance, building code, or other requirement;

4. compliance would result in the unreasonable encroachment on an adjacent property or easement; or

5. the municipality considers the structure to be a nonconforming structure.

(3) A motion to approve and confirm a decision of an administrative officer, on appeal, may, when appropriate, be based on findings that:

(A) the administrative officer's decision is proper;

(B) the decision was based on one or more points (list points); and

(C) these points should be upheld.

(4) The board administrator will administer and obtain a roll call vote from the board upon the rendering of a motion.

(cc) *Decisions of the board.*

(1) With due consideration to the length of the agenda, the nature of the case, the complexity of the evidence and the findings required, the chairman may elect, subject to being overruled by a majority of the members or alternates seated on motion duly passed:

(A) To proceed immediately to determination and decision on conclusion of the hearing in the particular case;

(B) To defer determination and decision until later in the same meeting should it be found advantageous to defer further determination or decision in the case for good cause stated; or

(C) To defer determination and decision until a specific meeting of the board should it be found advantageous to defer further determination or decision in the case for good cause stated.

(2) Appeals and applications shall be heard at public meetings within 70 days of date of assignment of docket numbers and decided at the same meeting, at the next meeting of the board, or at special public meeting, but in any event within 36 days of the initial meeting at which the hearing on the case was first held.

(3) If at least 75% of the ~~four~~ members or alternates serving as members of the board concur in a finding of error in any decision, order, requirement, or determination of the administrative officer appealed from, the decision shall be favorable to the appellant. Such decision by the board shall specify the decision, order, requirement, or determination which should have been made, and the decision of the board shall be binding upon the applicant and successors in interest.

(4) If at least 75% of the ~~four~~ members of the board concur that the evidence supports favorable findings on the application for a special exception before it, or that such findings could be made if conditions and safeguards were established, the decision shall be favorable to the applicant, provided that such conditions and safeguards as may be required for such favorable findings, as specified in the decision, shall be binding upon the applicant and successors in interest.

(5) If at least 75% of the ~~four~~ members of the board concur that the evidence supports favorable findings on the appeal for a variance before it, or that such findings could be made if conditions and safeguards were established, the decision shall be favorable to the applicant, provided that such conditions and safeguards as may be required for such favorable findings, as specified in the decision, shall be binding upon the appellant and his successors in interest.

(dd) *Records of cases of the board.* The decision of the board shall be shown in the record of the case. Such record shall show the reason for determination, with a summary of the evidence introduced and the findings of fact made by the board.

(ee) *Recording*. Such record shall be entered in the minutes of the board. Following approval, as submitted or as amended, the minutes shall be acknowledged as to accuracy by the signature of the chairman and the board administrator.

(ff) *Judicial Review Of Board Decision*

~~Any person or persons, jointly or severally aggrieved by any decision of the board, or any taxpayer, or any officer, department, board or bureau of the city, may present to a court of record a petition for a writ of certiorari, as provided by V.A.C.S., article 1011g, duly verified setting forth that such decision is illegal in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within ten days after the filing of the decision of the board in the office of the city secretary.~~

1. Any of the following persons may present to a district court, county court, or county court at law a verified petition stating that the decision of the board of adjustment is illegal in whole or in part and specifying the grounds of the illegality:

(A) a person aggrieved by a decision of the board;

(B) a taxpayer; or

(C) an officer, department, board, or bureau of the municipality.

2. The petition must be presented within 10 days after the date the decision is filed in the board's office.

3. On the presentation of the petition, the court may grant a writ of certiorari directed to the board to review the board's decision. The writ must indicate the time by which the board's return must be made and served on the petitioner's attorney, which must be after 10 days and may be extended by the court. Granting of the writ does not stay the proceedings on the decision under appeal, but on application and after notice to the board the court may grant a restraining order if due cause is shown.

4. The board's return must be verified and must concisely state any pertinent and material facts that show the grounds of the decision under appeal. The board is not required to return the original documents on which the board acted but may return certified or sworn copies of the documents or parts of the documents as required by the writ.

5. If at the hearing the court determines that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take evidence as directed. The referee shall report the evidence to the court with the referee's findings of fact and conclusions of law. The referee's report constitutes a part of the proceedings on which the court shall make its decision.

6. The court may reverse or affirm, in whole or in part, or modify the decision that

is appealed. Costs may not be assessed against the board unless the court determines that the board acted with gross negligence, in bad faith, or with malice in making its decision.

7. The court may not apply a different standard of review to a decision of a board of adjustment that is composed of members of the governing body of the municipality under Texas Statutes, Local Government Code Section 211.008(g) than is applied to a decision of a board of adjustment that does not contain members of the governing body of a municipality.