



## Development Services Department

Escambia County, Florida

### **Section 2.08.00 of the Escambia County Land Development Code**

As of October 1, 2009, quasi-judicial rezoning hearings shall be heard before the Planning Board which shall make recommendations to the Board of County Commissioners whose decisions shall be final.

#### **2.08.00. Rezoning, amendments to the zoning map, and text amendments to this Code.**

The board of county commissioners may amend, supplement, change, modify, or repeal by ordinance the boundaries, districts, regulations or restrictions herein established after public hearing, in accordance with Florida law; provided, however, that such amendments, supplement, change, or modification be consistent with the adopted Comprehensive Plan. All rezonings, applications and proposals requiring a quasi-judicial hearing shall be reviewed and acted upon in accordance with the procedures set forth herein. All text amendments to the code shall be reviewed and acted upon by the LPA prior to final action by the BCC. And, if any such amendments affect any regulation, standard or criteria governing activities at Pensacola Beach (the MU-5 area), such amendment shall be reviewed and acted upon by the SRIA board prior to consideration by the LPA and prior to final action by the BCC.

*2.08.01. Reserved.*

*2.08.02. Quasi-judicial rezonings.*

*A. Planning Board (LPA); functions regarding quasi-judicial rezonings.*

1. The Planning Board (LPA), as established in this Code, 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 the planning board, as provided herein, which shall make recommendations to the board of county commissioners whose decisions shall be final.
4. The planning staff shall provide administrative support to the planning board 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 business and the planning board shall conduct meetings pursuant to the provisions of the applicable codes, ordinances and resolutions.

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2. The planning staff shall provide for a court reporter at all quasi-judicial 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 planning staff shall keep indexed records of all hearings.

*Applications for rezoning.* Any person requesting a rezoning of a given parcel of real property shall make an application for such change with the planning staff on forms provided by the County. The application forms shall be accompanied by a copy of this 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 planning staff 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 planning staff shall schedule a hearing and forward completed applications to the planning board who shall conduct a public hearing and make a recommendation to the board of county commissioners.

### D. *Notice and public hearing.*

1. The planning staff 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 owner(s), of the quasi-judicial public hearing by mail, at least 15 days prior to the first scheduled quasi-judicial public hearing. The notice shall state the date, time and place of the 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 planning board when it is considered by the board of county

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commissioners.

- a. Notification of such subsequent hearing before the planning board 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 11.00.01.C. relative to notification within Navy Air Field areas of impact.
2. The planning staff shall place a 20" x 30" sign on the property to be rezoned announcing the case number, current zoning, proposed zoning, date, time and location of the quasi-judicial public hearing(s) at least 15 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 planning staff shall publish in a newspaper of general circulation in Escambia County, at least 15 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 planning staff for the planning board 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 planning board 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. In order to ensure compliance with the Sunshine law, the planning board, by a majority vote, shall direct planning staff during the scheduled hearing as to the content of the findings of fact and conclusions of law that will be included in its recommendation to the board of county commissioners. 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:

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- 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 uses in the area of the subject property(s);
  - d. *Changed conditions.* Whether and the extent to 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. An applicant for a proposed rezoning has the burden of proving by substantial, competent evidence that the proposed rezoning: is consistent with the Comprehensive Plan; furthers the goals, objectives and policies of the Comprehensive Plan and is not in conflict with any portion of the county's Land Development Code.

Upon the applicant proving the proposed rezoning complies with these criteria, the planning board shall recommend approval of the rezoning request to the board of county commissioners unless the planning board determines that there is substantial, competent evidence that maintaining the current zoning designation accomplishes a legitimate public purpose. For purposes of this section, a legitimate public purpose shall include but not be limited to preventing the following or as may be determined by law from time to time:

- a. The proposed rezoning and the development permitted there-under is premature or otherwise creates or contributes to an urban sprawl pattern of development;
- b. The proposed rezoning will constitute "spot zoning," that is an isolated zoning district unrelated to adjacent and nearby districts;
- c. The proposed rezoning will create an intrusion of commercial or industrial uses into an established residential area, such as a platted residential subdivision;
- d. The proposed rezoning and the development permitted there-under will result in

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significant adverse impacts upon property values of adjacent or nearby properties or in the immediate area more than the types of uses currently permitted;

- e. The proposed rezoning and the development permitted there-under will detract from the character and quality of life in the general area or neighborhood by creating excessive traffic, noise, lights, vibration, fumes, odors, dust, physical activities or other detrimental effects or nuisances.
8. Within ten days of receipt of planning board's recommended order, the planning staff 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 planning board and either adopt the recommended order, modify the recommendation order as set forth herein, reject the recommended order, or remand the matter back to the planning board for additional facts or clarification. Findings of fact or findings regarding legitimate public purpose 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 planning board; rather the matter shall be remanded with instructions. The review shall be limited to the record below. Only a party of record to the proceedings before the planning board 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 planning board, 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 planning board. Within 15 days of the hearing on remand, the planning board 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.

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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 planning staff 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 planning board 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 section 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 planning staff to all property owners with 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.

2.08.03. *Actual zoning map amendments.*

- A. *Applicant-initiated zoning map amendments.* Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, amendments to the actual zoning map initiated by persons other than the county shall be enacted according to the procedures established by F.S. § 125.66(2) and as amended.
- B. *County-initiated zoning map amendments involving less than ten contiguous acres.* Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, amendments to the actual zoning map initiated by the county and involving less than ten contiguous acres of land shall be enacted according to the procedures established by F.S. § 125.66(4)(a) and as amended.

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- C. *County-initiated zoning map amendments involving ten contiguous acres or more.*  
Without regard to whether the underlying rezoning decision requires a quasi-judicial hearing, actual zoning map amendments initiated by the county and involving ten or more contiguous acres of land shall be enacted according to the requirements of F.S. § 125.66(4)(b) and as amended.

### *2.08.04. Text amendments to this Code other than changes to the zoning map.*

- A. Any ordinance amending the provisions of this Land Development Code that does not change the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted according to the procedures of F.S. § 125.66(2) and as amended and according to the applicable procedural requirements set forth in chapters 2 and 4 of the Escambia County Comprehensive Plan.
- B. Any ordinance or resolution that changes the actual list of permitted, conditional, or prohibited uses within a zoning category shall be enacted according to the procedures of F.S. § 125.66(4)(b) and as amended and according to the applicable procedural requirements set forth in chapters 2 and 4 of the Escambia County Comprehensive Plan.

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