

- Any affected party may be represented by an attorney. If an attorney represents an affected party or several affected parties, the attorney shall complete the form prescribed by the board and identify the person or persons they represent and whether their client supports or opposes the petition before the board. The form shall be delivered to the Clerk at the proceeding.

(E) Commencement of the Hearing

- (1) The City Plan Board Members shall disclose any ex-parte communications that may have occurred.
 - a. Written communications--If a board member receives a written ex-parte communication relating to a matter coming before the board, the member should transmit the item to the Clerk for inclusion in the official records. These communications shall be made available to the parties as soon as practicable before the hearing.
 - b. Oral Communications--As soon as it becomes apparent that an inadvertent oral communication pertains to a matter coming before the board, the board member should explain to the person that the communication is improper, and that he or she is required to end the communication on that subject. At the time the item comes up for discussion at the board meeting, the board member should report any attempted ex-parte communication.
 - c. The petitioner and any affected party may examine each board member about these communications, directed through the Chair.
- 2) The petitioner, city staff, and all witnesses shall, in the interest of time, be collectively sworn by the Clerk or his or her designee,

(F) Irrelevant or Immaterial Testimony or Evidence Prohibited

Testimony or other evidence which is irrelevant or immaterial to the issue to be decided by the board is inadmissible. The board shall make rulings on objections to the relevance and materiality of the examination. The Chair, an affected party, staff, or a member of the board may raise an objection to the possibly irrelevant and immaterial testimony or evidence.

(G) Examination of Witnesses; Direct and Cross-Examination

The examination of witnesses shall be conducted under oath by direct examination on matters that are relevant and material to the issue or issues before the board. After the conclusion of direct examination, the witness may be cross-examined by another party, board member or staff. The inquiry under cross-examination shall be limited to matters raised in the direct examination of the witness being examined. No re-direct shall be allowed unless requested by a party stating the desired area of inquiry and the board approves that request. If re-direct is allowed, it shall be limited to questions of the witness on issues raised in the cross-examination. This provision shall not limit a board member from questioning any person on matters relevant to the petition before the board.

(H) Repetition of Testimony or Evidence Prohibited

During the presentation by the opponents or proponents of an issue before the board, no one may present testimony or evidence that is unduly cumulative or repetitious of previously presented testimony or evidence by a fellow opponent or proponent.

(I) Public Hearing

After presentation or testimony by staff, petitioner and affected parties, as described above, is completed, those members of the public who were not a party to the above-referenced portion of the proceedings may be permitted to speak up to five (5) minutes and present their comments and/or testimony to the board. No affected party, petitioner, staff or witness shall be allowed to speak during the public hearing portion of the proceedings.

(K) Continuances

The board may, in its discretion, at any time during the hearing, continue the hearing, and may request further information from any party.

(L) Board Deliberation and Vote

The City Plan Board shall then further deliberate the motion, if necessary, and reach a decision by voting on the motion. In reaching its decision the board may only consider evidence presented at the hearing and base its decision on the competent, substantial evidence of record.

(M) Board Oral Order

The board shall orally issue an order and state whether the petitioner's request is consistent with the City's rules, policies, or plans and other codes, as applicable.

(N) Board Written Order

The order shall be reduced to writing and shall include findings of fact and conclusions of law and state whether the petition is granted or denied or granted with conditions. The order shall also specify any conditions, requirements or limitations on the approval of the petition. The written order shall be presented to the board for approval at a special meeting or at the next regular meeting of the board. The Chair and the Clerk shall execute the order as it is approved. Executed copies of the order shall be mailed to the petitioner and any affected party.

Section 4 Informal Quasi-judicial and Administrative Actions

The following procedures will be observed with informal quasi-judicial and administrative actions that require such a hearing before the City Plan Board (pursuant to Article XI, section 2 of these rules):

(A) Order of Presentation; Time Limits:

- (1) The order of presentation, with corresponding time limits for each presentation, shall be as follows:

<u>Procedural Order</u>	<u>Time Limit (minutes)</u>
a) Swearing-in of witnesses, if desired by any party	
b) Disclosure of any <u>ex-parte</u> communications	1
c) Presentation of facts by staff	10
d) Presentation of case by petitioner	10
e) Testimony and/or presentation of evidence by any affected party either in support or in opposition	5 (per person)
f) Testimony from members of the public	3-5 (per person)
g) Questioning of witnesses and members of the public by board members	5 (per board member)
h) Final closing statement by petitioner	1
i) Deliberation and vote of the board	3-5 (per board member)

- (2) Any person testifying is subject to cross-examination by staff, the petitioner, or an affected party or questioning by the board members for clarification at any time.
- (3) The time limits set forth above may be modified by the board upon request of a party to the proceedings. Said request shall detail the additional time desired and the subjects to be discussed during the additional time, if granted. A request for an extension of time should be considered by the board to assure all parties have a full and fair opportunity to participate without undue repetition and delay.
- (4) Any affected person may speak for or against a petition before the board if they complete a registration card at the meeting as set forth in Section 3 (C), Registration of Affected Parties. The board may limit the time of any portion of an informal hearing to avoid unnecessary repetition and delay.
- (5) After presentation or testimony of staff, petitioner, and affected parties, those members of the public who were not a party to the quasi-judicial portion of the proceeding hearing may be permitted to speak up to five (5) minutes and present their comments and/or testimony to the board. No affected party, petitioner, staff or witness shall be allowed to speak during the public hearing portion of the proceedings.

Section 5 Legislative Actions

The following procedures will be observed with legislative actions (per Sec. 30-349, Codes of Ordinances) that require a hearing before the City Plan Board:

(A.) Order of Presentation; Time Limits:

(1) Procedural Order	Time Limit (minutes)
a) Staff presentation	10
b) Petitioner presentation	10
c) Public hearing (public comments)	3-5 (per person)
d) Deliberation and vote of the board	3-5 (per board member)

- (2) The time limits set forth above may be modified by the board upon request of a party to the proceedings. Said request shall detail the additional time desired and the subjects to

be discussed during the additional time, if granted. A request for an extension of time should be considered by the board to assure all parties have a full and fair opportunity to participate without undue repetition and delay.

ARTICLE XI

Final and Non-Final Decisions

Section 1 City Plan Board decisions on special use permits (other than wellfield special use permits), on development plans, appeals of concurrency determinations by the Community Development Director, and on appeals of presumptive vested rights decisions by the Community Development Director, are final decisions.

Section 2 City Plan Board decisions on land use and zoning changes, text amendments to the Comprehensive Plan and Land Development Code, wellfield special use permits, and right-of-way vacations are non-final, advisory decisions that are recommendations to the City Commission. Board recommendations shall be forwarded to the City Commission.

ARTICLE XII

These rules may be amended by a favorable vote of five (5) regular members of the City Plan Board. The procedural rules shall be subject to review and approval of the City Commission.

ARTICLE XIII

Roberts' Rules of Order shall govern parliamentary procedure in City Plan Board meetings.

Effective Date

The foregoing amendments to the rules of the City of Gainesville Plan Board shall take effect on [new date] and shall govern all proceedings commenced thereafter and apply retroactively to all proceedings then pending before the board.

VII. DISCUSSION

- Plan Board Rules

Chair Pearce asked for comment on the rules.

Mr. Cohen noted that Article 10, Section 3, discussed formal quasi-judicial and administrative actions. He asked why the rules regarding ex parte communications for administrative actions was stricter than the City Commission's rules for administrative actions.

Mr. Mimms indicated that the board's rules with regards to administrative actions were stricter than the City Commission's rules. He stated he had discussed the matter with the City Attorney's Office. He explained that the Mayor and City Commission amended their rules to allow ex parte communication and remove the presumption of prejudice from ex parte communications in connection with any quasi-judicial matter before the Commission. He noted that Section 286.0115 of the Florida Statutes permitted such a rule.

Mr. Rwebyogo indicated that it was his understanding that the board was not restricted, but had to disclose any ex parte communication.

Chair Pearce stated that, in his opinion, allowing ex parte communications was a mistake because it was impossible to relate the contents of a discussion, unless it was recorded. He suggested that it was inappropriate for private communication on a quasi-judicial matter under which competent substantial evidence had to be used to make decisions. He indicated that it was a matter of all board members receiving the same information. He stated that should he receive ex parte communications, he would feel it was his responsibility to relay every word to other members of the board in order to provide a fair hearing. He stated that it was his personal preference to avoid all ex parte communications.

There was discussion of administrative and legislative actions.

Mr. Cole suggested that history and experience had shown that allowing any member of the public any length of time to speak would encourage lengthy dialog. He suggested that, in order to keep meetings to a reasonable length, persons from the public should be given a 3 to 5 minute limit, as stated in the rules.

Chair Pearce indicated that he preferred to give the public the opportunity to discipline themselves first, then impose a time limit if necessary.

Mr. Cole noted that staff was limited to 10 minutes for presentations. He noted that he had seen few presentations that were less than 10 minutes.

Chair Pearce indicated that he would ask staff how much time they would require for presentations. He noted that there were general guidelines in terms of time limits. He stated that, as Chair, he preferred to allow a full hearing on a matter as opposed to curtailing discussion.

Mr. Gold stated that he believed staff presentations were sometimes longer than they needed to be. He suggested that the rules might be helpful to have staff act in a timely manner.

Mr. Cohen asked if limiting time in formal quasi-judicial hearings raised legal issues.

These minutes are not a verbatim account of this meeting. Tape recordings from which the minutes were prepared are available from the Community Development Department of the City of Gainesville.

Chair Pearce suggested that the key was to provide a full and fair hearing on the matter. He noted that there was time for cross-examination after each witness by staff, the petitioner, and affected parties for and against. He pointed out that it also provided for rebuttal as a separate matter.

There was discussion of the time limits for all speakers.

There was discussion of allowing affected parties rebuttal.

<p><u>Motion By:</u> Mr. Cole</p>	<p><u>Seconded By:</u> Mr. Reiskind</p>
<p><u>Moved to:</u> Approve the rules of the City Plan Board (<i>draft 10-13-04</i>) as presented except for modifications of:</p> <p>For consistency, take a verbatim of the language on Page 9, (J), "The time limits set forth in Sub-section (A) may be modified by...have a full and fair opportunity to participate without undue repetition," and add as: (B) to Page 11, Section 5, Legislative Actions, and replace: (3) on Page 10, Section 4 (A), Informal Quasi-judicial and Administrative Actions.</p> <p>Page 7, Change "In order to participate in the quasi-judicial proceeding..." (to) "In order to participate in the formal portion of the quasi-judicial proceeding..."</p>	<p><u>Upon Vote:</u> Motion Carried 5 - 0 Ayes: Cohen, Gold, Rwebyogo, Reiskind, Cole, Pearce.</p>