



Danny Raulerson
Executive Vice President

June 14, 2021

RE: Proposed Amendments to the Public Participation and Development Review Processes

The Honorable Mayor Lauren Poe and City Commissioners,

The Builders Association of North Central Florida (BANCF) appreciates you taking the time to hold a workshop on these proposed amendments and hear comments from industry professionals and property owners that would be directly affected by these changes. The development professionals that make up the BANCF membership are all in favor of ensuring appropriate measures for meaningful public participation. However, we do not support the proposed changes to “Table III-3. Summary of Development Review Process” and offer some additional comments and recommended changes for the remaining text.

The proposed changes to “Table III-3. Summary of Development Review Process” would require a public hearing for Major Level development projects, even if no variance is being requested. The City of Gainesville chose to remove the public hearing requirement when the Land Development Code was overhauled and approved in 2017 by Ordinance No. 140818.

The Development Review process is to determine whether or not the proposed plans are consistent with the City’s Land Development Code and construction standards. The City’s multi-disciplinary professional staff are more than qualified to make this determination. A public hearing which adds time and expense to an already long and expensive process is not necessary to determine LDC compliance.

Removal of the proposed amendments to Table III-3 will not negatively impact public participation or the public’s ability to provide comments. Neighborhood workshops have always been required for Major Level developments and still will be required if the proposed amendments to Table III-3 are removed.

BANCF would like to provide the following specific comments on the proposed new text in Section C. Public Participation Report. The proposed new text is provided in [blue underlined](#) text followed by our comment. These comments strive to provide clarity and

[\(1\) When a public participation report is required, the applicant shall provide a written report, satisfactory to the City Manger’s designee, documenting the results of the public participation effort in conjunction with the submittal of the development application.](#)

Comment: “satisfactory to City Manager’s designee” is vague and subjective; request checklist of contents for sufficiency.

(a.) Report Comments

(1) At a minimum, the public participation report shall include the following information:

(a) Which residents, property owners, interested parties, political jurisdictions and public agencies may be affected by the application;

Comment: Statutory notice is the responsibility of the local government, not the applicant. The applicant should be able to rely on the notification list provided by the City, consistent with whatever criteria the City adopts or state law requires. This provision is open-ended and provides a potential point of entry for third-party challenge and no manner or standard for the applicant to gauge compliance with the identification requirement. For example, "public agencies" literally could mean any public agency with jurisdiction in the City such as the federal EPA, Florida FDEP, FDOT, etc. "Political jurisdictions" is similarly vague and open-ended.

Comment: What is the penalty, recourse, or other action that the applicant may incur for failure to comply with this provision?

(b) How those parties identified will be informed of a substantive change, amendment, or development to the proposed application such as a significant intensification of proposed uses, a substantial (20%) increase in building area, an increase in the number of floors proposed, or the addition of a drive-through;

Comment: This depends on when in the process the undefined change occurs. The City has provisions for readvertising proposed ordinances according to well-settled principles of Florida law that curtail adoption when the substance of an ordinance has changed. Short of ordinance adoption, the process is necessarily fluid and should be kept so to encourage applicants to react to new information, new analysis, public comment at workshops, staff analysis, etc. This provision, read literally, would require a new workshop or other communique for each change interpreted to be "substantive", "amendment" or a "development to the proposed application" by some unknown party. At its logical conclusion, this provision sets up a process of informal pre-hearings fraught with peril before the binding public hearing at which the applicant is protected by due process and adopted codes and laws.

Comment: "substantive change" "amendment" and "development to the application" should be defined for purposes of this Section to remove ambiguity and prevent creating an unnecessary point of entry in a consistency challenge.

(c) How the applicant will keep the City informed as to the status of public participation efforts.

Comment: Request that the City determine in the adopted Code at which juncture the applicant must update the City and in what format.

(4) The report shall describe how the applicant has addressed, or intends to address the concerns, issues and problems expressed during the process.

(5) The report shall identify which concerns, issues and problems the applicant is unwilling or unable to address, if any, and shall state why.

Comment: These requirements likely would require disclosure of privileged communications between the applicant and land use counsel, attorney work product, or

the opinions of experts that are not expected to testify at hearing, all of which are protected under Florida law. Beyond identifying the requests and concerns aired by the public, which are required to be reported under Section (3), the remaining provisions should be permissive, not mandatory.

Lastly, BANCf would like to offer the following general comments on the proposed changes.

- Clarify that City staff will be responsible for providing all mailing labels for notifications, including any rental tenants not captured by Alachua County Property Appraiser ownership information.
- Clarify that City staff will provide the required signs for posted notice at the site.
- Define how 'interested parties' are to be determined.
- Neighborhood workshop attendance should be required to establish "party" standing at the public hearing phase (similar to requiring registration with the City a certain number of days prior to hearing); citizen public comment would not be affected. This requirement would increase the meaningfulness of the workshop process. Currently, the workshops are not well attended.
- Meetings beyond the required neighborhood workshop should be voluntary. Current draft begins to coerce additional meetings.

BANCf applauds the City Commission and their attempts to ensure the best public participation process possible and requests that these comments from the professional development community be considered when drafting an updated version of these standards. We appreciate the opportunity to provide input into this very important process.

Sincerely,



Danny Raulerson
BANCf Executive Vice President