

06/18/06

**City of**  
**Gainesville**

**Inter-Office Communication**

**Planning Division**  
**X5022, FAX x2282, Station 11**

**To:** City Plan Board  
**From:** Planning Division Staff  
**Subject:** Revision of Plan Board Rules

**Discussion Item**

**Date:** December 14, 2006

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**Explanation**

Planning staff has recently requested and received advice from the Law Department regarding changing Article XIII of the *Rules For City Plan Board* to allow for some flexibility with regard to the application of Robert's Rules of Order. The October 31, 2006 e-mail (excerpted below) from the City Attorney provides useful background information and suggests that Article XIII could be amended to provide an exception from the application of Robert's Rules whenever a board specific rule may conflict with the general parliamentary rules of procedure. The City Commission in its adopted rules includes a rule (Rule XX, see below) that allows for similar flexibility.

Rule XX of the City Commission's rules states that "*Robert's Rules of Order, Newly Revised (Tenth Edition), so far as they are applicable and do not conflict with these (City Commission) Rules or the Ordinances or Charter of the City, shall guide the City Commission as needed.*" This rule has been used to govern the procedures of the City Commission. By similarly amending its rules, and applying its rules consistently and fairly, the City Plan Board can avoid a potential legal or other challenge by a person who believes they were denied due process or were denied their right to be heard at a public hearing.

Article XIII of the City Plan Board's rules currently states that Robert's Rules of Order shall govern parliamentary procedure in City Plan Board meetings. Planning staff would like the Plan Board to consider revising this article to allow for appropriate flexibility with respect to the Board's use of Robert's Rules of Order. The suggested revisions are provided on Page 3 of this memorandum.

*October 31, 2006 e-mail from City Attorney Marion Radson to Comprehensive Planning Chief Dean Mimms:*

This e-mail is in reply to your request for Legal Services received on Monday, October 30, 2006...

You ask whether it is advisable for the City Plan Board to amend its current Rules and adopt Roberts Rules of Order "as a general guide for parliamentary procedure in City Plan Board meetings".

Your question does not actually raise a legal issue for which a legal opinion may be rendered. Nevertheless I will offer these observations that may be used as a guide by you, or the members of the Plan Board, in making a policy decision.

Initially, I will offer some general comments that are derived from an authority on Robert's Rules of Order. It is well accepted that parliamentary procedure provides the means whereby the affairs of an organization can be controlled by the general will of the whole membership. For parliamentary procedure to make its proper contribution to constructive and democratic meetings, it should be followed from the beginning as a matter of course, and should not be regarded as something to be resorted to only when trouble arises. At the same time, there should always be a flexibility as to the strictness of application of the rules - dependent on the particular situation and the members' knowledge of parliamentary procedure. Under no circumstances should concern for parliamentary correctness be permitted to impose undue artificiality in a business meeting. **Robert's Rules of Order Revised**, Foreword, p. iii-v.

In the context of board meetings, a petitioner seeking a quasi-judicial decision, or a person opposed to the petition, may claim that he or she was denied procedural due process. As you are aware, in quasi judicial proceedings, parties are entitled to a fair opportunity to be heard in person or through counsel, to have an opportunity to rebut the case against their interests, and to be heard before any final decision is reached. For this reason, this office has developed a set of suggested rules to be used in both formal and informal quasi judicial proceedings. I note that the City Plan Board has adopted a set of rules that, if followed, would provide parties with procedural due process. See Board of County Commissioners v. Snyder, 627 So. 2d 469 (Fla. 1993)...

...At a minimum, the Rules of the City Plan Board should make reference to some set of procedural rules that would govern their proceedings whenever a procedural question is raised by a board member or participant in a meeting. Otherwise, the board may be left in a quandary as to how to proceed in any particular matter.

I would suggest that Rule XIII of the City Plan Board be amended to provide an exception from the application of Robert's Rules (or any other adopted parliamentary procedure rules, such as Sturgis Standard Code of Parliamentary Procedure) whenever a board specific rule may conflict with the general parliamentary rules of procedure. As long as the adopted rules are consistently and fairly applied, the board can avoid a legal or other challenge by any person who believes that they were denied due process, or that they were denied their right to be heard in a public meeting.

### **Suggested Revisions to Article XIII, Rules For City Plan Board**

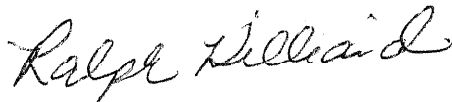
Suggested additions are underlined. Suggested deletions are shown with ~~strike through~~.

#### **ARTICLE XIII**

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

Robert's Rules of Order, Newly Revised (Tenth Edition), so far as they are applicable and do not conflict with these (City Plan Board) Rules or the Ordinances of the City, shall guide the City Plan Board as needed with respect to parliamentary procedure.

Respectfully submitted,



Ralph Hilliard,  
Planning Manager

RH: dm

Attachment: Rules for City Plan Board (Approved by City Plan Board 12-20-04;  
Approved by City Commission 1-10-05)

**RULES FOR CITY PLAN BOARD**  
*Approved by City Plan Board 12-02-04*  
*Approved by City Commission 1-10-05*

**ARTICLE I**

**Objectives**

The objectives and purposes of the City Plan Board of Gainesville, Alachua County, Florida, are those powers and duties delegated to the City Plan Board by the Charter Laws and Codes of Ordinances for the City of Gainesville.

**ARTICLE II**

**Membership**

- Section 1** Number of Members - As stated in Section 30-353 (a) (1) of the Codes of Ordinances, the City Plan Board shall consist of seven (7) regular members appointed by the City Commission.
- Section 2** As stated in Section 30-353 (a) (2) of the Code, the City Plan Board shall have an additional member (the "school board representative") that represents and is appointed by the School Board of Alachua County, and is a non-voting member.
- Section 3** Term - Each regular member shall be appointed for a term of three (3) years and shall hold office until a successor has been appointed and qualifies. A regular member may serve only two (2) consecutive three-year terms. However, after a year has passed, a former member may request a reappointment. Members shall serve on only one (1) permanent Board/Committee at a time.
- Section 4** Attendance - Any appointee to the City Plan Board (hereinafter the "board") shall be automatically removed from the board upon filing with the Clerk of the Commission, the attendance record that indicates:
- The board member has failed to attend four (4) or more consecutive meetings, or that the overall attendance record of the member is less than sixty-six and two-thirds (66.66%) percent for any six (6) month period. As used in this section, attendance means presence at the meeting no later than 15 minutes after the meeting is called to order as verified by the secretary on the attendance record.
- Section 5** Vacancies - Shall be filled by appointment of the City Commission for the unexpired term of any regular member whose term becomes vacant.

**ARTICLE III**

**Officers and Their Duties**

- Section 1** The officers of the City Plan Board shall consist of a Chair and Vice-Chair.
- Section 2** The Chair shall preside at all meetings and hearings of the board and shall have the duties normally conferred by parliamentary usage on such officers. The Chair shall have the privilege of discussing all matters before the board and voting thereon.
- Section 3** The Vice-Chair shall act for the Chair in the Chair's absence.
- Section 4** In the absence of the Chair and Vice-Chair, the quorum present shall select a Chair for the meeting.

#### **ARTICLE IV**

##### **Election of Officers**

- Section 1** Nomination of officers shall be made from the floor at the annual organization meeting that shall be held at a regular or special meeting in October of each year, and the elections shall follow immediately thereafter. The school board representative is not eligible to serve as an officer of the City Plan Board, and is not eligible to vote in the election of officers.
- Section 2** A candidate receiving a majority vote of the entire regular membership of the board shall be declared elected and shall serve for one year at the pleasure of the board or until a successor shall take office. The maximum length a member may hold the office of Chair is limited to two (2) consecutive one-year terms. The Vice-Chair shall be eligible for re-election without restriction.
- Section 3** Officers shall be seated immediately following their election.
- Section 4** Vacancies in office shall be filled immediately by regular election procedure.

#### **ARTICLE V**

##### **Clerk/secretary of the City Plan Board**

- Section 1** The Director of the Department of Community Development or designee shall act as Clerk/secretary of the City Plan Board (hereinafter the "Clerk"). The Clerk shall appoint a member of staff who shall serve as the secretary, recorder and custodian of all board records. The Planning Division shall keep the minutes of all meetings, prepare agendas, provide notices for all meetings, arrange proper and legal notice of hearings, and attend to correspondence of the board and to such other duties as are normally carried out by the Clerk.
- Section 2** It is the duty of the Clerk to provide notice of each meeting to the Clerk of the Commission at least 48 hours (excluding Saturdays, Sundays and Holidays) prior to the meeting. The Clerk shall make, or cause to be made, the minutes of each meeting, and shall verify the attendance of board members at each meeting. The

Clerk shall file the attendance record with the Clerk of the Commission as soon as practicable.

## ARTICLE VI

### Meetings

- Section 1** Meetings shall be held at least once per month, normally on the third Thursday of every month from 6:30 p.m. to 10:30 p.m., and at such additional times as deemed necessary for proper performance of its duties. If the board has not completed the agenda by 10:30 p.m. the board may vote to extend the meeting, or continue all unfinished business to the next earliest meeting that may be available. The meeting will be for the purpose of hearing all items of public business, holding public hearings on text changes to the comprehensive plan and to the land development code, land use changes, zoning changes, special use permits, development plans that require approval by the board, right-of-way vacations, and approval of all special items or other matters on which the board is required to act, including appeals of concurrency determinations and of presumptive vested rights decisions by the Community Development Director.
- Section 2** A majority of the regular membership of the board, which is four (4) members, shall constitute a quorum. A record of the vote shall be kept as a part of the minutes.
- Section 3** Special meetings may be called by the Chair. It shall be the duty of the Chair to call such a meeting when requested to do so by a majority vote of the regular members of the board. The notice of such a meeting shall specify the purpose of such a meeting and no other business may be considered except by unanimous consent of the board. All members of the board, be they regular members or the school board representative, shall be notified in advance of such special meetings by the Clerk.
- Section 4** In order to be considered by the City Plan Board, applications shall be submitted to the Planning Division, Department of Community Development, in accord with the schedule adopted each year by the City Plan Board. All requests received after the deadlines for a receipt of such requests will be considered at the regular meeting of the following month.

## ARTICLE VII

### Order of Business

The order of business at regular meetings shall be:

- (a) Roll call
- (b) Approval of agenda
- (c) Approval of minutes
- (d) Requests to address the board
- (e) Old business

- (f) New business
- (g) Board member comments, report of officers and committees
- (h) Adjournment

## ARTICLE VIII

### Discretionary Meetings

- Section 1** In addition to those required by law, the board may at its discretion hold public meetings when it decides that such meetings will be in the public interest.
- Section 2** Notice of such meetings shall be published in the official newspaper of the municipality or in a newspaper of general circulation.
- Section 3** The case before the board shall be presented in summary by staff or by a designated member of the board, and parties in interest shall have privileges of the floor. The Chair may limit the amount of debate when the occasion warrants.
- Section 4** A record shall be kept of those speaking before the board.

## ARTICLE IX

### Basis for Decisions

**Section 1** **Zoning Changes** (per Section 30-347.3, Codes of Ordinances)

In reviewing and formulating recommendations to the City Commission on requested or proposed changes in the zoning of a property or properties, the City Plan Board shall consider and evaluate the changes in relation to all pertinent factors, including the following:

- (a) The character of the district and its peculiar suitability for particular uses.
- (b) Conservation of the value of buildings and encouraging the most appropriate use of land throughout the City.
- (c) The applicable portions of any current City plans and programs such as land use, traffic ways, recreation, schools, neighborhoods, drainage and housing.
- (d) The needs of the City for land areas for specific purposes to serve population and economic activities.
- (e) Whether there have been substantial changes in the character or development of areas in or near an area under consideration for rezoning.
- (f) Consistency with the goals, objectives and policies of the comprehensive plan.
- (g) The facts, testimony and reports presented to the City Plan Board at public hearings.

**Section 2 Land Use Changes** (per Policy 4.1.3, Future Land Use Element, 2000 – 2010 Comprehensive Plan)

The City Plan Board will review proposed changes to the Future Land Use Map by considering factors such as, but not limited to, the following:

- a. Overall compatibility of the proposal;
- b. Surrounding land uses;
- c. Environmental impacts and constraints;
- d. Whether the change promotes urban infill;
- e. Whether the best interests, community values or neighborhood support is achieved; and
- f. Consistency with other elements of the comprehensive plan.

In no case shall a change to the Future Land Use Plan or any other Policy in the Future Land Use Element indicate a presumption that the City Plan Board shall recommend a change of designation of land use for any other parcel.

**Section 3 Special Use Permits** (per Section 30-233, Codes of Ordinances)

No special use permit shall be approved by the City Plan Board unless the following findings are made concerning the proposed special use:

- a. That the use or development complies with all required regulations and standards of this chapter and other applicable regulations.
- b. That the proposed use or development will have general compatibility and harmony with the uses and structures on adjacent and nearby properties.
- c. That necessary public utilities are available to the proposed site and have adequate capacity to service the proposed use and development.
- d. That the use or development is serviced by streets with adequate capacity to accommodate the traffic impacts of the proposed use.
- e. That screening and buffers are proposed of such type, dimension and character to improve compatibility and harmony of the proposed use and structure with the uses and structures of adjacent and nearby properties.
- f. That the use or development conforms with the general plans of the city as embodied in the city comprehensive plan.
- g. That the proposed use or development meets the level of service standards adopted in the comprehensive plan and conforms with the concurrency management requirements of this chapter as specified in article III, division 2.

**Section 4 Development Plan Review** (per Section 30-161, Codes of Ordinances)

The City Plan Board or the development review coordinator shall review any minor plan, intermediate plan, major plan or any amendment to any previously approved plan based upon the competent and substantial evidence presented by the reviewing authority, the petitioner, property owners, who are entitled to notice, affected persons, as determined by the board, and other interested persons related to any of the following factors:



- a. Whether the plans meets submittal requirements of the Land Development Code including payment of fees and compliance with submittal schedules to ensure adequate notice and review.
- b. Whether the proposed development is consistent with the Comprehensive Plan, the Land Development Code, applicable special area plans and other applicable regulations.
- c. Whether the proposed development meets the level of service standards adopted in the City of Gainesville comprehensive Plan. Proof of meeting these standards shall exist in the form of a certificate of concurrence exemption, certificate of preliminary or final concurrency (as applicable at the particular development review stage), or certificate of conditional concurrency reservation.
- d. Whether the proposed development complies with other applicable factors and criteria prescribed by the Comprehensive Plan, the Land Development Code, or other applicable law.

## **ARTICLE X**

### **City Plan Board Hearings**

#### **Section 1      Quasi-judicial hearings before the City Plan Board**

The quasi-judicial hearings (including but not limited to cases involving zoning changes, special use permits, and development plan review) by the board shall be either formal or informal quasi-judicial hearings and shall conform to Section 30-348, Code of Ordinances. A formal quasi-judicial hearing is a hearing where Petitioners and affected parties have the rights and responsibilities of a party as set forth below in Sections 3(B) - 3(D). An informal quasi-judicial hearing is a hearing where the petitioner and public may present testimony for or against a proposal before the board without the procedures of a formal quasi-judicial hearing. In all cases, quasi-judicial hearings shall be informal when the findings of the board are advisory only to the City Commission. (In such a case, a formal quasi-judicial hearing may occur in a subsequent hearing before the City Commission if properly requested per City Commission rules.)

#### **Section 2      Selection of formal or informal quasi-judicial hearing**

In cases where the finding of the board will be final (see Article XI, section 1), all persons entitled to actual written notice of a petition for a special use permit, pursuant to Chapter 30, Gainesville Codes of Ordinances, may request a formal quasi-judicial hearing before the board no less than seven (7) days prior to the meeting when the petition is scheduled to be heard. Persons who are not entitled to actual written notice and claim they are an affected party must simultaneously file their request for a formal quasi-judicial hearing, if and when applicable, and affected party status no less than seven (7) days prior to the meeting when the petition is scheduled to be heard. Failure to timely file a written request for a formal hearing, if and when applicable, shall set the petition for an informal quasi-judicial hearing, per Section 4, Informal Quasi-judicial and Administrative Actions.

**Section 3 Formal Quasi-judicial and Administrative Actions**--The following procedures will be observed in formal quasi-judicial and administrative actions that require a hearing before the City Plan Board.

(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	1
b) Disclosure of any <u>ex-parte</u> communications	1
*c) Staff presentation	10
*d) Petitioner presentation	20
*e) Affected party (if any) <i>for</i>	5 (per person)
*f) Affected party (if any) <i>against</i>	5 (per person)
*g) Rebuttal (petitioner/staff)	5
h) Close of presentation by petitioner, staff and affected parties	
i) Public hearing (comment period for other members of the public)	3-5 (per person)
j) Deliberation and vote of the board	3-5 (per board member)

- (2) Witnesses may be presented during parts c-g of the presentation, and are subject to cross-examination by affected parties, staff or petitioner during parts c-g.
- (3) Cross examination is limited to ten (10) minutes per witness.
- (4) 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.

(B) Affected Party – Definition; Determination

- (1) An affected party is any person who is entitled to actual written notice of a petition before the board, pursuant to Chapter 30, Gainesville Codes of Ordinances.
- (2) A party who is not entitled to actual written notice but who believes that they have a special interest or would suffer an injury distinct in kind and degree from that shared by the public at large by the petition, may request affected party status by filing an application form with the Clerk in writing.

(C) Registration of Affected Parties

In order to participate in the formal portion of the quasi-judicial proceeding, all affected parties shall complete the form prescribed by the board, stating their name and address and other pertinent information, and whether they support or oppose the proposal before the board. The form shall be delivered to the Clerk at the proceeding.

(D) Representation of Affected Parties

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	1
b) Disclosure of any <u>ex-parte</u> communications	10
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 January 10, 2005 and shall govern all proceedings commenced thereafter and apply retroactively to all proceedings then pending before the board.

**DISCUSSION ITEM – Revision of Plan Board Rules**

Dean Mimms gave the Staff presentation and stated Staff has recently requested and received advice from the Law Department for a small change in the City Plan Board Rules to allow for some flexibility in the application of Robert's Rules of Order, newly revised Tenth Edition. Mr. Mimms requested the Board vote on this discussion item.

<b>Motion By:</b> David Gold	<b>Seconded By:</b> Jack Walls
<b>Moved To:</b> Approve the proposed revision of the Plan Board Rules as presented by Staff	<b>Upon Vote:</b> None taken additional Board members had comments

Mr. Tecler inquired about the City Plan Board Rules that references the number of absentees that allows each Board member to miss 4 consecutive Board meetings before a member is removed from the Board and feels that it is needs to be revised.

The Board discussed the attendance policy and would like to have the policy more specific in attendance to regularly schedule meeting opposed to special meetings.

<b>Motion By:</b> David Gold	<b>Seconded By:</b> Bob Cohen
<b>Moved To:</b> Approve the proposed revision of the Plan Board Rules as presented by Staff	<b>Upon Vote:</b> 6 – 0

David Gold stated he would like Staff to give an opinion as to what the attendance rule or policy should be as the general consensus of the Board was to reduce the number of absentees from four to three. Mr. Hilliard stated Staff will communicate with the City Clerk of the Commission Office as the attendance may be a rule that can not be changed.



**RULES FOR CITY PLAN BOARD**  
*Approved by City Plan Board ~~12 14 06 12-02-04~~*  
*~~Approved by City Commission 1-10-05~~*

**ARTICLE I**

**Objectives**

The objectives and purposes of the City Plan Board of Gainesville, Alachua County, Florida, are those powers and duties delegated to the City Plan Board by the Charter Laws and Codes of Ordinances for the City of Gainesville.

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- Section 3**      Term - Each regular member shall be appointed for a term of three (3) years and shall hold office until a successor has been appointed and qualifies. A regular member may serve only two (2) consecutive three-year terms. However, after a year has passed, a former member may request a reappointment. Members shall serve on only one (1) permanent Board/Committee at a time.
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- The board member has failed to attend four (4) or more consecutive meetings, or that the overall attendance record of the member is less than sixty-six and two-thirds (66.66%) percent for any six (6) month period. As used in this section, attendance means presence at the meeting no later than 15 minutes after the meeting is called to order as verified by the secretary on the attendance record.
- Section 5**      Vacancies - Shall be filled by appointment of the City Commission for the unexpired term of any regular member whose term becomes vacant.

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- Section 3** The Vice-Chair shall act for the Chair in the Chair's absence.
- Section 4** In the absence of the Chair and Vice-Chair, the quorum present shall select a Chair for the meeting.

#### ARTICLE IV

##### Election of Officers

- Section 1** Nomination of officers shall be made from the floor at the annual organization meeting that shall be held at a regular or special meeting in October of each year, and the elections shall follow immediately thereafter. The school board representative is not eligible to serve as an officer of the City Plan Board, and is not eligible to vote in the election of officers.
- Section 2** A candidate receiving a majority vote of the entire regular membership of the board shall be declared elected and shall serve for one year at the pleasure of the board or until a successor shall take office. The maximum length a member may hold the office of Chair is limited to two (2) consecutive one-year terms. The Vice-Chair shall be eligible for re-election without restriction.
- Section 3** Officers shall be seated immediately following their election.
- Section 4** Vacancies in office shall be filled immediately by regular election procedure.

#### ARTICLE V

##### Clerk/secretary of the City Plan Board

- Section 1** The Director of the Department of Community Development or designee shall act as Clerk/secretary of the City Plan Board (hereinafter the "Clerk"). The Clerk shall appoint a member of staff who shall serve as the secretary, recorder and custodian of all board records. The Planning Division shall keep the minutes of all meetings, prepare agendas, provide notices for all meetings, arrange proper and legal notice of hearings, and attend to correspondence of the board and to such other duties as are normally carried out by the Clerk.
- Section 2** It is the duty of the Clerk to provide notice of each meeting to the Clerk of the Commission at least 48 hours (excluding Saturdays, Sundays and Holidays) prior to the meeting. The Clerk shall make, or cause to be made, the minutes of each meeting, and shall verify the attendance of board members at each meeting. The Clerk shall file the attendance record with the Clerk of the Commission as soon as practicable.

## ARTICLE VI

### Meetings

- Section 1** Meetings shall be held at least once per month, normally on the third Thursday of every month from 6:30 p.m. to 10:30 p.m., and at such additional times as deemed necessary for proper performance of its duties. If the board has not completed the agenda by 10:30 p.m. the board may vote to extend the meeting, or continue all unfinished business to the next earliest meeting that may be available. The meeting will be for the purpose of hearing all items of public business, holding public hearings on text changes to the comprehensive plan and to the land development code, land use changes, zoning changes, special use permits, development plans that require approval by the board, right-of-way vacations, and approval of all special items or other matters on which the board is required to act, including appeals of concurrency determinations and of presumptive vested rights decisions by the Community Development Director.
- Section 2** A majority of the regular membership of the board, which is four (4) members, shall constitute a quorum. A record of the vote shall be kept as a part of the minutes.
- Section 3** Special meetings may be called by the Chair. It shall be the duty of the Chair to call such a meeting when requested to do so by a majority vote of the regular members of the board. The notice of such a meeting shall specify the purpose of such a meeting and no other business may be considered except by unanimous consent of the board. All members of the board, be they regular members or the school board representative, shall be notified in advance of such special meetings by the Clerk.
- Section 4** In order to be considered by the City Plan Board, applications shall be submitted to the Planning Division, Department of Community Development, in accord with the schedule adopted each year by the City Plan Board. All requests received after the deadlines for a receipt of such requests will be considered at the regular meeting of the following month.

## ARTICLE VII

### Order of Business

The order of business at regular meetings shall be:

- (a) Roll call
- (b) Approval of agenda
- (c) Approval of minutes
- (d) Requests to address the board
- (e) Old business
- (f) New business
- (g) Board member comments, report of officers and committees
- (h) Adjournment

## ARTICLE VIII

### Discretionary Meetings

- Section 1** In addition to those required by law, the board may at its discretion hold public meetings when it decides that such meetings will be in the public interest.
- Section 2** Notice of such meetings shall be published in the official newspaper of the municipality or in a newspaper of general circulation.
- Section 3** The case before the board shall be presented in summary by staff or by a designated member of the board, and parties in interest shall have privileges of the floor. The Chair may limit the amount of debate when the occasion warrants.
- Section 4** A record shall be kept of those speaking before the board.

## ARTICLE IX

### Basis for Decisions

**Section 1** **Zoning Changes** (per Section 30-347.3, Codes of Ordinances)

In reviewing and formulating recommendations to the City Commission on requested or proposed changes in the zoning of a property or properties, the City Plan Board shall consider and evaluate the changes in relation to all pertinent factors, including the following:

- (a) The character of the district and its peculiar suitability for particular uses.
- (b) Conservation of the value of buildings and encouraging the most appropriate use of land throughout the City.
- (c) The applicable portions of any current City plans and programs such as land use, traffic ways, recreation, schools, neighborhoods, drainage and housing.
- (d) The needs of the City for land areas for specific purposes to serve population and economic activities.
- (e) Whether there have been substantial changes in the character or development of areas in or near an area under consideration for rezoning.
- (f) Consistency with the goals, objectives and policies of the comprehensive plan.
- (g) The facts, testimony and reports presented to the City Plan Board at public hearings.

**Section 2** **Land Use Changes** (per Policy 4.1.3, Future Land Use Element, 2000 – 2010 Comprehensive Plan)

The City Plan Board will review proposed changes to the Future Land Use Map by considering factors such as, but not limited to, the following:

- a. Overall compatibility of the proposal;
- b. Surrounding land uses;
- c. Environmental impacts and constraints;
- d. Whether the change promotes urban infill;
- e. Whether the best interests, community values or neighborhood support is achieved; and
- f. Consistency with other elements of the comprehensive plan.

In no case shall a change to the Future Land Use Plan or any other Policy in the Future Land Use Element indicate a presumption that the City Plan Board shall recommend a change of designation of land use for any other parcel.

**Section 3 Special Use Permits** (per Section 30-233, Codes of Ordinances)

No special use permit shall be approved by the City Plan Board unless the following findings are made concerning the proposed special use:

- a. That the use or development complies with all required regulations and standards of this chapter and other applicable regulations.
- b. That the proposed use or development will have general compatibility and harmony with the uses and structures on adjacent and nearby properties.
- c. That necessary public utilities are available to the proposed site and have adequate capacity to service the proposed use and development.
- d. That the use or development is serviced by streets with adequate capacity to accommodate the traffic impacts of the proposed use.
- e. That screening and buffers are proposed of such type, dimension and character to improve compatibility and harmony of the proposed use and structure with the uses and structures of adjacent and nearby properties.
- f. That the use or development conforms with the general plans of the city as embodied in the city comprehensive plan.
- g. That the proposed use or development meets the level of service standards adopted in the comprehensive plan and conforms with the concurrency management requirements of this chapter as specified in article III, division 2.

**Section 4 Development Plan Review** (per Section 30-161, Codes of Ordinances)

The City Plan Board or the development review coordinator shall review any minor plan, intermediate plan, major plan or any amendment to any previously approved plan based upon the competent and substantial evidence presented by the reviewing authority, the petitioner, property owners, who are entitled to notice, affected persons, as determined by the board, and other interested persons related to any of the following factors:

- a. Whether the plans meets submittal requirements of the Land Development Code including payment of fees and compliance with submittal schedules to ensure adequate notice and review.
- b. Whether the proposed development is consistent with the Comprehensive Plan, the Land Development Code, applicable special area plans and other applicable regulations.
- c. Whether the proposed development meets the level of service standards adopted in the City of Gainesville comprehensive Plan. Proof of meeting these standards shall exist in the form of a certificate of concurrence exemption, certificate of preliminary or final concurrency (as applicable at the particular development review stage), or certificate of conditional concurrency reservation.

- d. Whether the proposed development complies with other applicable factors and criteria prescribed by the Comprehensive Plan, the Land Development Code, or other applicable law.

## ARTICLE X

### City Plan Board Hearings

#### Section 1 Quasi-judicial hearings before the City Plan Board

The quasi-judicial hearings (including but not limited to cases involving zoning changes, special use permits, and development plan review) by the board shall be either formal or informal quasi-judicial hearings and shall conform to Section 30-348, Code of Ordinances. A formal quasi-judicial hearing is a hearing where Petitioners and affected parties have the rights and responsibilities of a party as set forth below in Sections 3(B) - 3(D). An informal quasi-judicial hearing is a hearing where the petitioner and public may present testimony for or against a proposal before the board without the procedures of a formal quasi-judicial hearing. In all cases, quasi-judicial hearings shall be informal when the findings of the board are advisory only to the City Commission. (In such a case, a formal quasi-judicial hearing may occur in a subsequent hearing before the City Commission if properly requested per City Commission rules.)

#### Section 2 Selection of formal or informal quasi-judicial hearing

In cases where the finding of the board will be final (see Article XI, section 1), all persons entitled to actual written notice of a petition for a special use permit, pursuant to Chapter 30, Gainesville Codes of Ordinances, may request a formal quasi-judicial hearing before the board no less than seven (7) days prior to the meeting when the petition is scheduled to be heard. Persons who are not entitled to actual written notice and claim they are an affected party must simultaneously file their request for a formal quasi-judicial hearing, if and when applicable, and affected party status no less than seven (7) days prior to the meeting when the petition is scheduled to be heard. Failure to timely file a written request for a formal hearing, if and when applicable, shall set the petition for an informal quasi-judicial hearing, per Section 4, Informal Quasi-judicial and Administrative Actions.

#### Section 3 Formal Quasi-judicial and Administrative Actions--The following procedures will be observed in formal quasi-judicial and administrative actions that require a hearing before the City Plan Board.

(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	1
b)	Disclosure of any <u>ex-parte</u> communications	1
*c)	Staff presentation	10
*d)	Petitioner presentation	20
*e)	Affected party (if any) <i>for</i>	5 (per person)
*f)	Affected party (if any) <i>against</i>	5 (per person)
*g)	Rebuttal (petitioner/staff)	5
h)	Close of presentation by petitioner, staff and affected parties	
i)	Public hearing (comment period for other members of the public)	3-5 (per person)
j)	Deliberation and vote of the board	3-5 (per board member)

\*(2) Witnesses may be presented during parts c-g of the presentation, and are subject to cross-examination by affected parties, staff or petitioner during parts c-g.

(3) Cross examination is limited to ten (10) minutes per witness.

(4) 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.

(B) Affected Party – Definition; Determination

(1) An affected party is any person who is entitled to actual written notice of a petition before the board, pursuant to Chapter 30, Gainesville Codes of Ordinances.

(2) A party who is not entitled to actual written notice but who believes that they have a special interest or would suffer an injury distinct in kind and degree from that shared by the public at large by the petition, may request affected party status by filing an application form with the Clerk in writing.

(C) Registration of Affected Parties

In order to participate in the formal portion of the quasi-judicial proceeding, all affected parties shall complete the form prescribed by the board, stating their name and address and other pertinent information, and whether they support or oppose the proposal before the board. The form shall be delivered to the Clerk at the proceeding.

(D) Representation of Affected Parties

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.

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(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.~~

Robert's Rules of Order, Newly Revised (Tenth Edition), so far as they are applicable and do not conflict with these (City Plan Board) Rules or the Ordinances of the City, shall guide the City Plan Board as needed with respect to parliamentary procedure.

### Effective Date

The foregoing amendments to the rules of the City of Gainesville Plan Board shall take effect on ~~January 10, 2005~~ and shall govern all proceedings commenced thereafter and apply retroactively to all proceedings then pending before the board.