



**City of Gainesville
Department of Sustainable Development
Planning Division**

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CITY PLAN BOARD STAFF REPORT

PUBLIC HEARING DATE: March 31, 2022

ITEM NO: 211052

PROJECT NUMBER AND NAME: Proposed Text Amendment Change for Name Change of Clerk of the Commission to City Clerk

APPLICATION TYPE: Text Amendment (Legislative)

CITY PROJECT CONTACT: Phimetto D. Lewis, Planner III

APPLICATION INFORMATION:

Agent/Applicant: City Plan Board

Related Petition(s): None

Legislative History: Ordinance # 191051 and Resolution #200500

Neighborhood Workshop: N/A

BACKGROUND AND EXPLANATION:

The Gainesville City Commission approved a proposed charter amendment to re-title the position, “Clerk of the Commission” to “City Clerk”. This action requires an ordinance modification to the following sections of the Land Development code: Sections **30-3.3, 30-3.4, 30-3.37, 30-3.39, and 30-10.8** which currently references Clerk of the Commission.

Proposed modification

The proposed Ordinance is submitted to implement the above action, amending the appropriate sections of the Land Development Code to reflect the Charter Amendment, Ordinance #191051 and Resolution #200500. The modification is to amend the existing ordinances as referenced above and change the title of “Clerk of the Commission” to “City Clerk”.

The attached ordinance, prepared by the City Attorney’s office incorporates the changes necessary to the existing ordinance to implement the action of the City Commission.

Staff's recommendation to the City Plan Board

The Planning Board to: 1) Hear presentation on Text Change for the Name Change of Clerk of the Commission to City Clerk; 2) Staff recommends approval of Petition LD22-000013

Draft motion for consideration

I move approval of Petition LD22-000013 TCH.

POST-APPROVAL REQUIREMENTS:

Following the City Plan Board's recommendation, the petition shall be presented to the City Commission for final action.

Upon City Commission approval, all reference of the code should be changed to re-title the "Clerk of the Commission" to "City Clerk". This action shall modify the following sections: **30-3.3, 30-3.4, 30-3.37, 30-3.39, and 30-10.8 of the Land Development Code.**

LIST OF ATTACHMENTS:

Attachment A. Draft Ordinance

Attachment B. Sections **30-3.3, 30-3.4, 30-3.37, 30-3.39, 30-10.8 of the Land Development Code**

27 **WHEREAS**, in order to conform the Land Development Code to the Charter, certain sections referencing
28 "clerk of the commission" must be changed to "city clerk"; and

29 **WHEREAS**, this ordinance, which was noticed as required by law, will amend the text of the Land
30 Development Code as described herein; and

31 **WHEREAS**, the City Plan Board, which acts pursuant to the authority granted in Section 4.02 of the Charter
32 Laws of the City of Gainesville and which acts as the Local Planning Agency pursuant to Section 163.3174,
33 Florida Statutes, held a public hearing on August 26, 2021, and voted to recommend the City Commission
34 approve this text change to the Land Development Code; and

35 **WHEREAS**, at least ten days' notice has been given once by publication in a newspaper of general
36 circulation notifying the public of this proposed ordinance and of public hearings in the City Hall
37 Auditorium located on the first floor of City Hall in the City of Gainesville; and

38 **WHEREAS**, public hearings were held pursuant to the notice described above at which hearings the parties
39 in interest and all others had an opportunity to be and were, in fact, heard; and

40 **WHEREAS**, the City Commission finds that the Land Development Code text amendment described herein
41 is consistent with the City of Gainesville Comprehensive Plan.

42 **NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GAINESVILLE, FLORIDA:**

43 **SECTION 1.** Subsection (B)(5)(b) of Section 30-3.3 of the Land Development Code is amended as follows.

44 Except as amended herein, the remainder of Section 30-3.3 remains in full force and effect.

45 **Sec. 30-3.3. City Plan Board.**

46 **B. Membership.**

47 5. Probationary period for regular members.

- 48 b. Any appointee who fails to successfully complete the probationary period, except as
49 provided below, shall be automatically disqualified for membership on the city plan board,
50 upon the filing with the city clerk ~~of the commission~~ of appropriate proof that the appointee
51 has failed to successfully complete the probationary period.

52

53 **SECTION 2.** Subsection (B)(4)(b) of Section 30-3.4 of the Land Development Code is amended as follows.
54 Except as amended herein, the remainder of Section 30-3.4 remains in full force and effect.

55 **Sec. 30-3.4. Development Review Board.**

56 B. *Membership.*

57 4. Probationary period.

- 58 b. Any appointee who fails to successfully complete the probationary period, except as
59 provided below, shall be automatically disqualified for membership on the development
60 review board, upon the filing with the city clerk ~~of the commission~~ of appropriate proof that
61 the appointee has failed to successfully complete the probationary period.

62
63 **SECTION 3.** Subsection (E)(4)(b) of Section 30-3.37 of the Land Development Code is amended as follows.
64 Except as amended herein, the remainder of Section 30-3.37 remains in full force and effect.

65 **Sec. 30-3.37. Subdivisions.**

66 E. *Final plat.*

67 4. *Review.*

- 68 b. *City commission review.* If the final plat is consistent with the design plat as approved by the
69 city commission, meets all requirements of this chapter, and otherwise complies with all
70 applicable laws and ordinances, it shall be forwarded to the city commission for final
71 consideration. Upon approval, the final plat shall bear certification of the approval by the
72 city clerk ~~of the city commission~~.

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74 **SECTION 4.** Subsection (B)(1) of Section 30-3.39 of the Land Development Code is amended as follows.
75 Except as amended herein, the remainder of Section 30-3.39 remains in full force and effect.

76 **Sec. 30-3.39. Security for Subdivision Improvements.**

77 B. *Conditional final plat.*

- 78 1. In lieu of the security requirements of this section, the city commission may approve a
79 conditional final plat, where approval of the plat is conditioned on the subdivider proceeding
80 with installation of the required subdivision improvements and fully completing the
81 improvements, in full accordance with approved plans and specifications and the ordinances of
82 the city, within two years of the date of conditional final plat approval. The plat shall not be
83 recorded, but shall be retained by the city clerk ~~of the commission~~ until the city manager shall
84 have certified that all required subdivision improvements have been completed in accordance

85 with approved plans and specifications and ordinances of the city and the same has been
86 approved by the city commission. Upon certification by the city manager and upon proof by
87 title insurance or other similar assurance to the satisfaction of the city that there are no liens or
88 possibilities of liens on the subdivision improvements or on the property to be dedicated to the
89 public, and that the dedicator has clear fee title thereto, the city shall approve the final plat and
90 accept the dedication of the public right-of-way easements, and other dedicated portions as
91 previously shown on the prior approved plat as set out in this chapter, and the subdivider shall
92 record the plat and provide copies as specified in section 30-3.37.

93

94 **SECTION 5.** Subsection (C)(5) of Section 30-10.8 of the Land Development Code is amended as follows.

95 Except as amended herein, the remainder of Section 30-10.8 remains in full force and effect.

96 **Sec. 30-10.8. Vested Rights Determination Process.**

97 *C. Appeals.*

98 5. *Hearing officer decision.* No later than 30 calendar days following the date of the appeal
99 hearing, the hearing officer shall file with the city manager or designee, with a copy to the
100 applicant and the city clerk of the commission, a written determination that includes
101 appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The
102 decision of the hearing officer, which may affirm, affirm with conditions, or reverse the decision
103 of the city manager or designee, shall be based upon the criteria for presumptive or
104 nonpresumptive vesting as established in this division, and shall be guided by the
105 Comprehensive Plan, this chapter, and established case law. The decision of the hearing officer
106 shall be final, subject to judicial review.

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108 **SECTION 6.** It is the intention of the City Commission that the provisions of Sections 1 through 5 of this
109 ordinance become and be made a part of the Code of Ordinances of the City of Gainesville, Florida, and
110 that the sections and paragraphs of the Code of Ordinances may be renumbered or relettered in order to
111 accomplish such intent.

112 **SECTION 7.** If any word, phrase, clause, paragraph, section, or provision of this ordinance or the
113 application hereof to any person or circumstance is held invalid or unconstitutional, such finding will not
114 affect the other provisions or applications of this ordinance that can be given effect without the invalid or
115 unconstitutional provision or application, and to this end the provisions of this ordinance are declared
116 severable.

117 **SECTION 8.** All ordinances or parts of ordinances in conflict herewith are to the extent of such conflict
118 hereby repealed.

119 **SECTION 9.** This ordinance will become effective immediately upon adoption.

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121 **PASSED AND ADOPTED THIS ____ DAY OF _____, 2022.**

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128 ATTEST:

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132 _____
OMICHELE D. GAINEY

133 CITY CLERK

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135

136 This ordinance passed on first reading this ____ day of _____, 2022.

137

138 This ordinance passed on second reading this ____ day of _____, 2022.

LAUREN POE
MAYOR

Approved as to form and legality

DANIEL M. NEE
INTERIM CITY ATTORNEY

Sec. 30-3.3. City plan board.

- A. *Establishment and purpose.* The city plan board (CPB), which shall be designated as the local planning agency in accordance with F.S. § 163.3174, is hereby created and shall have the following duties:
1. Plan for the proper growth and development of the city, meaning the scientific, aesthetic, and orderly disposition of land, resources, facilities, and services with the goal of securing an environment for present and future generations that is environmentally sustainable, socially just and desirable, and economically sound. The board shall keep constantly informed of and in touch with the physical changes of the city and its surrounding environs and is authorized to gather information and make recommendations to the city commission with regard to such growth and development.
 2. Prepare the City of Gainesville Comprehensive Plan and amendments thereto, and make recommendations to the city commission regarding the adoption or amendment of such plan.
 3. Monitor and oversee the effectiveness and status of the Comprehensive Plan, and recommend to the city commission such changes in the Comprehensive Plan as may from time to time be required, including the periodic evaluation and appraisal of the Comprehensive Plan required by F.S. § 163.3191.
 4. Review proposed land development regulations, the Land Development Code, or amendments thereto, and make recommendations to the city commission as to the consistency of each proposal with the adopted Comprehensive Plan.
 5. Perform all other functions, duties, and responsibilities designated by the Land Development Code or otherwise assigned by the city commission.
- B. *Membership.*
1. The city plan board shall have seven regular members, representing a cross section of the city, appointed by the city commission. Regular members of the city plan board shall be and remain bona fide residents of the city. If at any time a member of the city plan board fails to remain a resident of the city, such person shall no longer serve on the board.
 2. The city plan board shall have an additional member (hereinafter, the "school board representative") that represents and is appointed by the School Board of Alachua County. The duties of the school board representative are limited to attending city plan board meetings at which the city plan board considers Comprehensive Plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the proposed amendment or rezoning. The school board representative shall be a non-voting member.
 3. Each member shall be appointed to a three-year term commencing on November 1 of the year appointed. Members may be reappointed for consecutive terms and may hold office after expiration of their term until a successor has been appointed and qualified.
 4. When a regular member position becomes vacant before the end of the term, the city commission shall appoint a substitute member to fill the vacancy for the duration of the vacated term. When the school board representative position becomes vacant before the end of the term, the School Board of Alachua County shall appoint a substitute member to fill the vacancy for the duration of the vacated term.
 5. Probationary period for regular members.
 - a. New appointees to the city plan board shall complete a 60-day probationary period prior to commencement of the term of office. During this period appointees shall meet the same attendance requirements as other board members, but shall not have the power to vote or be counted for the purpose of constituting a quorum.

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- b. Any appointee who fails to successfully complete the probationary period, except as provided below, shall be automatically disqualified for membership on the city plan board, upon the filing with the clerk of the commission of appropriate proof that the appointee has failed to successfully complete the probationary period.
 - c. Exception. The city commission may waive the required probationary period for any appointee to the city plan board upon good cause shown and entered in the record of the minutes of the city commission.
- C. *Officers.*
- 1. The members of the city plan board shall annually elect a chair and vice-chair from among the regular members and may create and fill other offices as the board deems necessary. The chair shall preside over the board and shall have the right to vote. In the absence of the chair, the vice-chair shall perform the duties of the chair.
 - 2. The city plan board may create whatever subcommittees it deems necessary to carry out the purposes of the board. The chair of the board shall annually appoint the membership of each subcommittee from the regular members of the board. The school board representative is eligible for subcommittee membership, and the chair of the board may appoint the school board representative to any given subcommittee.
 - 3. The city manager shall appoint a city employee to serve as secretary to the board, recorder and custodian of all board records.
- D. *Compensation of members; funding; absenteeism; legal counsel.*
- 1. Neither regular members nor the school board representative shall be compensated, but may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the city commission.
 - 2. The city commission shall appropriate funds to permit the city plan board to perform its prescribed functions.
 - 3. Absenteeism by regular board members shall be governed by board rules.
 - 4. The city attorney shall provide legal counsel to advise and represent the board as necessary.
- E. *Rules of procedure.* The city plan board shall adopt rules of procedure to carry out its purposes. All rules shall conform to this article, the Code of Ordinances and state law, and shall be reviewed and approved by the city commission.
- 1. The board shall meet at least once each calendar month, unless cancelled by the board or its chair, and more often at the call of the chair or the city commission.
 - 2. The board shall adopt rules setting the number of members needed to establish a quorum.
 - 3. Each decision of the board shall be approved by a majority vote of the regular members present at a meeting in which a quorum is in attendance and voting.
 - 4. The board shall conduct hearings in accordance with this article and state law.
 - 5. The board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question.
- F. *Final and non-final decisions.* The city plan board has final decision authority for special use permits (other than wellfield special use permits), development plans, determinations for nonpresumptive vested rights and concurrency, and decisions on binding resource determinations. All other actions of the board are non-final and advisory to the city commission. Advisory actions of the board shall not obligate the city.

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- G. *Implementation of board's decision.* Any permit, authorization, or other development order issued, based on the board's decision, prior to the end of the period for filing an appeal for any available administrative or judicial remedies is considered conditional. Any action taken during the appeal period is taken at the sole risk of the property owner or representative, who may be required to undo any work done if the decision of the board is overturned either by a rehearing of the board, an appeal for an administrative remedy, or an appeal to a court of competent jurisdiction.

Sec. 30-3.4. Development review board.

- A. *Establishment and purpose.* The development review board (DRB) is hereby created and shall have the following duties:
1. Review and act upon applications for development plan approval pursuant to the Land Development Code. The airport authority shall act in the capacity of the development review board for development plans for the Gainesville Regional Airport in accordance with an approved airport layout plan.
 2. Review and approve, approve with conditions or deny modifications and variances from the requirements of this Land Development Code, as specifically provided in this Land Development Code.
 3. Make recommendations to the city plan board on land development regulations either upon referral by the city plan board or upon its own initiation.
 4. Perform all other functions, duties, and responsibilities designated by the Land Development Code or otherwise assigned by the city commission.
- B. *Membership.*
1. The development review board shall have seven regular members appointed by the city commission. Members of the development review board shall be and remain bona fide residents of the city. If at any time a member of the development review board fails to remain a resident of the city, such person shall no longer serve on the board. When appointing residents to the development review board, the city commission shall give special consideration to those with the following experience:
 - a. An architect or landscape architect.
 - b. A civil engineer.
 - c. A person engaged in real estate sales or development.
 - d. A professional with experience in natural or environmental sciences.
 - e. An urban planner; and
 - f. A citizen at large.
 2. Each member shall be appointed to a three-year term commencing on November 1 of the year appointed. Members may be reappointed for consecutive terms and may hold office after expiration of their term until a successor has been appointed and qualified.
 3. When a member position becomes vacant before the end of the term, the city commission shall appoint a substitute member to fill the vacancy for the duration of the vacated term.
 4. Probationary period.
 - a. New appointees to the development review board shall complete a 60-day probationary period prior to commencement of the term of office. During this period appointees shall meet the same attendance requirements as other board members, but shall not have the power to vote or be counted for the purpose of constituting a quorum.
 - b. Any appointee who fails to successfully complete the probationary period, except as provided below, shall be automatically disqualified for membership on the development review board, upon the filing with the clerk of the commission of appropriate proof that the appointee has failed to successfully complete the probationary period.

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- c. Exception. The city commission may waive the required probationary period for any appointee to the development review board upon good cause shown and entered in the record of the minutes of the city commission.
- C. *Officers.*
- 1. The members of the development review board shall annually elect a chair and vice-chair from among the members and may create and fill other offices as the board deems necessary. The chair shall preside over the board and shall have the right to vote. In the absence of the chair, the vice-chair shall perform the duties of the chair.
 - 2. The development review board may create whatever subcommittees it deems necessary to carry out the purposes of the board. The chair of the board shall annually appoint the membership of each subcommittee.
 - 3. The city manager shall appoint a city employee to serve as secretary to the board, recorder and custodian of all board records.
- D. *Compensation of members; funding; absenteeism; legal counsel.*
- 1. Board members shall not be compensated, but may be paid for travel and other expenses incurred on board business under procedures prescribed in advance by the city commission.
 - 2. The city commission may appropriate funds to permit the development review board to perform its prescribed functions.
 - 3. Absenteeism by board members shall be governed by board rules.
 - 4. The city attorney shall provide legal counsel to advise and represent the board as necessary.
- E. *Rules of procedure.* The development review board shall adopt rules of procedure to carry out its purposes. All rules shall conform to this article, the Code of Ordinances and state law, and shall be reviewed and approved by the city commission.
- 1. The board shall meet at least once each calendar month, unless cancelled by the board or its chair, and more often at the call of the chair or the city commission.
 - 2. The board shall adopt rules setting the number of members needed to establish a quorum.
 - 3. Each decision of the board shall be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting.
 - 4. The board shall conduct hearings in accordance with this article and state law.
 - 5. The board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question.
- F. *Implementation of board's decision.* Any permit, authorization, or other development order issued, based on the board's decision, prior to the end of the period for filing an appeal for any available administrative or judicial remedies is considered conditional. Any action taken during the appeal period is taken at the sole risk of the property owner or representative, who may be required to undo any work done if the decision of the board is overturned either by a rehearing of the board, an appeal for an administrative remedy, or an appeal to a court of competent jurisdiction.

Sec. 30-3.37. Subdivisions.

- A. *Requirements.* To effectuate the purpose of this article, every subdivision of land within the city shall be made in accordance with the requirements specified in this article. Such requirements include a pre-application conference; obtaining design plat approval; obtaining construction plan approval; obtaining final plat approval; constructing required public improvements; and supplying security for the construction and maintenance of such improvements. Proposed residential subdivisions shall meet the level of service standards adopted in the Comprehensive Plan. Proof of meeting these standards shall exist in the form of a certificate of concurrency exemption, certificate of preliminary or final concurrency (as applicable at the particular review stage), or certificate of conditional concurrency reservation.
- B. *Pre-application conference.*
1. *Required.* Prior to the preparation of a design plat, the subdivider shall seek the advice of city staff to become familiar with the subdivision requirements, city policies and provisions of the Comprehensive Plan. The subdivider is encouraged to bring plans and data specified in this section so as to clearly show existing conditions of the site and its vicinity and the proposed layout of the subdivision. It is intended that the procedure will assist the subdivider in preparing a plat that will meet the requirements of this article. This procedure does not require a formal application or fee.
 2. *Prohibited or discouraged designs or improvements.* As indicated in this article and further referenced in the Design Manual, certain practices, designs or improvements are discouraged or prohibited. If prohibited, a modification will be required in order for the same to be allowed. If discouraged, the same may be allowed by the city commission depending on a proper showing of necessity and the infeasibility of requiring the preferred practices, designs or improvements when applied to the particular circumstances involved.
 3. *Concept review (Sketch drawing).* The applicant may submit an application for the optional concept subdivision review by city staff, with a sketch that contains the following:
 - a. Approximate tract boundaries.
 - b. Approximate location with respect to section lines.
 - c. Streets on and adjacent to the tract.
 - d. Proposed general street layout.
 - e. Environmental features including but not limited to significant topographical and physical features, regulated surface waters and wetlands, regulated natural and archaeological resources, creeks, uplands, lakes, wetlands, FEMA and community determined flood plains, and heritage trees.
 - f. Generalized existing vegetation, including areas of native forest where the land shows no evidence of prior use for agriculture.
 - g. Proposed general lot layout and the total number of lots.
 - h. Existing buildings on the property.
 - i. Land use and zoning designation of the subject property.
 - j. Generalized stormwater management plan.

The review schedule for concept subdivision plans shall follow the same submittal and review schedule for development plans. As far as may be practicable on the basis of a sketch, the reviewer will, without prejudice to the city, advise the subdivider of the extent to which the proposed subdivision conforms

to the standards of this chapter and other applicable ordinances or statutes, and will discuss possible plat modifications necessary to secure compliance and whether a traffic study will be required.

C. *Design plat.*

1. *Generally.* Prior to the recording of an approved final plat, or prior to the conditional approval of a final plat, clearing and grubbing of land, tree removal, and the construction of improvements is expressly prohibited. Following a pre-application conference, the requirements of this section become applicable and supersede any other regulation on tree removal.
2. *Application.* After a mandatory pre-application conference with staff, an application shall be completed on a form prescribed by the city and submitted together with the applicable fee. Each application shall include multiple copies of the design plat as necessary to facilitate the review process, prepared in accordance with the standards specified in this chapter and including all of the specifications set forth in this section. Proposed residential subdivisions shall meet the level of service standards adopted in the Comprehensive Plan. Proof of meeting these standards shall exist in the form of a certificate of concurrency exemption, certificate of preliminary concurrency or certificate of conditional concurrency reservation.
3. *Fees.* The fee required with an application for design plat approval shall be as set forth in appendix A. Such fees are required to defray the cost of filing the application, notifying interested parties, conducting investigations, and holding hearings on the design plat and final plat.
4. *Developments of regional impact.* For any subdivision that is presumed to be a development of regional impact as provided in F.S. Ch. 380 and Chapter 27F, Florida Administrative Code, additional copies of the design plat and a completed application for development approval shall be submitted for filing with the regional planning agency and the state land planning agency.
5. *Specifications.*
 - a. The design plat shall be drawn clearly and legibly at a scale of at least one inch equals 100 feet on linen or stable base film, using a sheet size of 24 inches by 36 inches, reserving a three-inch binding margin on the left side and a one-inch margin on the other three sides. If more than one sheet is required, an index map relating each sheet to the entire subdivision shall be shown on the first sheet. The design plat shall be prepared by a land surveyor, signed and sealed before review, and shall contain the following information:
 - i. Proposed name of the subdivision.
 - ii. Name and registration number of surveyor.
 - iii. Date of survey approval, north point with bearing or azimuth reference clearly stated in the notes or legend, graphic and written scale, and space for revision dates.
 - iv. Vicinity map showing location with respect to major roads and acreage of the subdivision.
 - v. Boundary line of the tract by bearings and distances.
 - vi. Legal description of the tract to be subdivided.
 - vii. Preliminary layout including streets, alleys and easements with dimensions and proposed street names, lot lines with approximate dimensions, land to be reserved or dedicated for public uses, and designation of any land to be used for purposes other than single-family dwellings.
 - viii. Total number of lots.
 - ix. The front building setback line for each lot.

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- x. An inscription stating "NOT FOR FINAL RECORDING."
 - xi. Sidewalks, on all streets, on both sides, and at least five feet wide.
- b. The design plat shall also contain or be accompanied by:
- i. The name, address, and telephone number of the property owner and of any agent of the property owner involved in the subdivision of the property.
 - ii. The exact locations, names, and widths of all existing streets, alleys, and recorded easements within and immediately adjoining the subdivided lands.
 - iii. The location and a general description of any utilities facility on the subdivision tract.
 - iv. The invert elevation of existing and proposed sewers.
 - v. The location and size of existing improvements on the subdivision tract.
 - vi. The zoning and land use plan designations of lands within the subdivision tract and of abutting property.
 - vii. Natural and manmade features on the subdivision tract, including creeks, ponds, lakes, sinkholes, wetlands, watercourses, municipal, and community wellfield management zones, major aquifer recharge areas, and lands within the floodplain and flood channel as shown on the community determined flood control maps and FEMA.
 - viii. The location of all major tree groupings and identification of all heritage trees by genus and species on the subdivision tract, a designation of which tree groupings and heritage trees are proposed to be removed, and identification by genus and species of all regulated trees located in or within 15 feet of any proposed right-of-way or utility improvement. A generalized landscaping plan that shows the locations of the required shade trees with the appropriate space allocations to meet code requirements for street trees, buffers, retention basins, and stormwater management facilities. The design plat and the final plat shall include a statement that all champion and high quality heritage trees shall be preserved or mitigated in accordance with the requirements of this code.
 - ix. Stormwater management plan in accordance with this chapter and the Design Manual.
 - x. A soil survey map.
 - xi. A generalized statement outlining, as far as is known, the subsurface conditions of the subdivision tract, including subsurface soil, rock, and groundwater conditions, the location and results of any soil permeability tests, the location of any underground storage tanks, and the location and extent of any muck pockets.
 - xii. A topographic map of the subdivision tract and a minimum of 100 feet or more of the surrounding area as required to determine the offsite drainage and any impacts caused by or related to the offsite drainage. The map shall be prepared by a land surveyor, with maximum intervals of one foot where overall slopes are no more than two percent, two feet where slopes are between two and ten percent, and five feet where slopes are ten percent or greater based on North American Vertical Datum, 1988.
 - xiii. A general location map showing the relationship of the subdivision tract to such external facilities as streets, residential area, commercial facilities, and recreation or open space areas, and greenways, within one mile of the tract.
 - xiv. A plan for the elimination and future control of invasive non-native plant species from the site. The non-native removal shall be completed as specified in the management plan prior

to the issuance of the first certificate of occupancy and yearly inspections for three years to assure that infested areas have remained at less than ten percent of the initial population.

- c. If the proposed subdivision contains land located within the floodplain as shown on the community determined flood control maps and FEMA maps, the subdivider shall be required to submit topographic information for areas adjoining sides of the channel, cross sections for land to be occupied by the proposed development, high water information, boundaries of the land within the floodplain and other pertinent information.
 - d. If the proposed subdivision includes regulated surface waters or wetlands, or regulated natural and archaeological resources, the subdivider shall be required to submit the following additional information for those areas designated:
 - i. A design plat showing buffer distances between the areas to be developed and regulated surface waters and wetlands, and regulated natural and archaeological resources.
 - ii. Square footage and percent of total subdivision tract to consist of impervious surface.
 - iii. A description of strategies to protect or restore environmental features on the subdivision tract.
 - iv. Projected on-site and off-site water quality impacts to outstanding Florida waters (OFW) that may result from the proposed subdivision.
 - v. Any required set-aside, conservation management area, or mitigation area.
6. *Officials' examination.*
- a. The design plat shall be reviewed and commented on by the technical review committee and other applicable departments and agencies.
 - b. The public works director or designee shall examine the design plat to determine if the application conforms to criteria for general engineering, traffic stormwater management, flood plains and maintenance easement requirements.
 - c. The general manager for utilities or designee shall examine and check the design plat for needed utility easements.
 - d. The planning and development services department shall, at the development review board and city commission hearings on the design plat, report the findings and recommendations of the reviewing officials and county, state, and federal agencies, together with an analysis of the conformance and nonconformance of the design plat to the provisions of this chapter and other applicable requirements.
7. *Development review board review.*
- a. At a scheduled public meeting, the development review board will receive reports on and review the design plat to determine its conformance with all applicable requirements.
 - b. The development review board review shall include consideration of staff findings and evidence and testimony from the general public. The board shall determine if the proposed subdivision is in conformity with the general goals and objectives of the city with respect to the Comprehensive Plan; the city's official roadway map; existing zoning requirements, including amendments thereto; policies and plans established by the city with respect to neighborhoods, lake levels, water supply, maintenance of the tree canopy levels identified in the Comprehensive Plan, control of invasive non-native plant species, protecting environmental features, provision for emergency access, consideration of pedestrian, bicycle and transit access and greenway connections, waste disposal and other essential utilities; the overall stormwater management

plan including landscaping of stormwater management basins; and policies for development in any special improvement and redevelopment districts. Particular attention shall be given to the arrangement, location, and width of streets, the provision of high quality shade trees along the streets, their relation to the topography of the land, water supply, sewage disposal, stormwater management, lot sizes and arrangement, and the present or future development of abutting property.

- c. The board may approve the design plat as presented if found to be in compliance, require modifications, or disapprove the plat. Approval of the design plat, subject to conditions, revisions and modifications as stipulated by the board, shall constitute conditional board approval of the subdivision as to the character and intensity of development and the general layout and approximate dimensions of streets, lots and other proposed features. If the design plat is disapproved, the Development Review Board shall indicate the reasons therefor.
8. *City commission review.*
- a. Within 60 calendar days after development review board approval, the subdivider shall file with the city at least three copies of the design plat, including any modifications imposed by the development review board. If the subdivider does not file the design plat within the prescribed time period, no preliminary development order shall be issued unless an extension of time is requested in writing prior to the expiration of that period and is granted by the city commission. In granting an extension, the city commission may attach such other restrictions or conditions as the commission deems appropriate to serve the public interest. In the case of residential subdivisions, the city commission may vote to grant extensions for design plat review of up to six months only and only if the subdivider possesses a valid, unexpired certificate of concurrency exemption, certificate of preliminary concurrency or certificate of conditional concurrency reservation, as appropriate. Further extensions for city commission review of design plats for residential subdivisions shall require a new concurrency review.
 - b. The city commission shall review the recommended design plat and consider findings made by the development review board and staff. The city commission shall determine if the proposed subdivision is in conformity with the general goals and objectives of the city with respect to the Comprehensive Plan; existing zoning requirements, including all amendments thereto; policies and plans established by the city with respect to neighborhoods, lake levels, water supply, sustaining the urban forest, protecting environmental features, provision for emergency access, consideration of pedestrian, bicycle, vehicle, and transit access and greenway connections, waste disposal and other essential utilities; the overall stormwater management plan; and policies for development in any special improvement and redevelopment districts. Particular attention shall be given to the arrangement, location, function, and width of streets, their consistency with the goal of developing a multimodal transportation network and providing sufficient space for street trees both above and below ground, their interaction with the overall transportation system and relation to the topography of the land, water supply, sewage disposal, stormwater management, lot sizes and arrangement, and the present or future development of abutting property.
 - c. The commission may approve the design plat as presented if found to be in compliance, require modifications, or disapprove the design plat if it is not in compliance. If disapproved, the design plat shall be redesigned before resubmission for approval.
 - d. *Effect of approval.* Approval of the design plat by the city commission is a preliminary development order. It shall not constitute acceptance of a final plat but shall be deemed an expression of approval of the layout submitted as a guide to the preparation of the final plat. The preliminary development order and the associated design plat shall expire and be of no further effect 12 months from the date of approval unless either a timely final plat is filed for approval or the time is extended with appropriate conditions by the city commission prior to expiration;

otherwise, the subdivider shall reapply for design plat approval in accordance with the provisions of this chapter. In the case of residential subdivisions, the city commission may vote to grant extensions of up to six months only, and only if all the concurrency management requirements of this chapter can be met and if the extension would not be in conflict with any other ordinance of the city. The approval of nonresidential subdivisions in no way reserves capacity for the purposes of concurrency. This provision regarding the effect of approval and expiration of a design plat shall not be subject to a variance or otherwise superseded by any ordinance or regulation of the city.

D. *Construction plans.*

1. *Preparation.* Following city commission approval of the design plat, the subdivider shall submit construction plans and specifications for all subdivision improvements required in accordance with this article. The construction plans shall be prepared by an engineer registered in the state in conformance with this article, the Design Manual, and other applicable local, state, and federal regulations.

Plans for the proposed improvements and a boundary survey shall be required. The improvement plans shall show the proposed locations, sizes, types, grades, and general design features of each facility, and shall be based upon reliable field data. These drawings shall include, at a minimum, a topographic map, stormwater management plan, a landscape plan, an invasive exotic plant control plan, and construction drawings showing street profiles, street cross sections, and water supply, sewer and stormwater management as specified by the public works department and Gainesville Regional Utilities and all champion and heritage trees identified for preservation or removal, with protective barricades drawn to scale. The landscape plan shall show all buffers and stormwater management areas as well as the locations and specifications for street trees.

2. *Review.* The subdivider shall submit multiple sets of plans as necessary to facilitate review by the city in accordance with development review. The construction plans shall be approved if they are consistent with the approved design plat and comply with all standards and specifications. If the construction plans are not consistent with the design plat as approved by the city commission or do not comply with all standards and specifications, the city shall issue either:
 - a. Conditional approval, subject to any necessary modifications that shall be indicated on the plans or attached to them in writing; or
 - b. Disapproval of the construction plans or any portion thereof, indicating in writing the reasons for the disapproval. The subdivider shall be responsible for timely resubmittal of acceptable plans within 12 months from the date of approval of the preliminary development order.

E. *Final plat.*

1. *Generally.* The final plat shall conform to the design plat as approved by the city commission and shall incorporate all modifications and revisions specified in the approval, except shifts in stormwater and roadway facilities that do not change lot layout may deviate from the design plat with approval from the city manager or designee.
2. *Application.* After approval of the design plat and construction plans, the final plat and other information required in this section shall be submitted in the correct form as prescribed by the city. The following shall be submitted for the final plat review:
 - a. The original stable base film tracing of the final plat prepared in accordance with the requirements of this article, F.S. Ch. 177, and any other applicable statutes and ordinances.
 - b. A title opinion of an attorney at law licensed in Florida or a certification by an abstractor or title company as required by F.S. Ch. 177.
 - c. Applicable public improvement security documents.

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- d. An additional fee as set forth in appendix A to defray the expense of investigating, holding hearings and acting upon the final plat.
 - e. An additional fee as set forth in appendix A to defray the expenses of inspection of roadway and drainage facilities by the city manager or designee.
3. *Specifications.* The final plat shall be legibly drawn at a scale of at least one inch equals 100 feet using a sheet size of 24 inches by 36 inches, reserving a three-inch binding margin on the left-hand side and a one-inch margin on the other three sides. If more than one sheet is required, an index map relating each sheet to the entire subdivision shall be shown on the first sheet. The final plat shall be prepared by a land surveyor in accordance with and include all of the information required by F.S. Ch. 177. The final plat shall also contain:
- a. The exact boundary line of the tract.
 - b. A vicinity map showing the location and acreage of the lands subdivided.
 - c. The location of all creeks, ponds, lakes, sinkholes, wetlands, and watercourses within the subdivided lands and any part of the lands within the flood channel or floodplain as shown on the city's flood control maps adopted pursuant to this chapter as of the date of final plat submission.
 - d. The front building setback line for each lot.
 - e. Any subdivision boundary that is within a half-mile radius of any horizontal geodetic control monument established by the county control densification survey or National Geodetic Survey Horizontal or Vertical Control Network bearing confirmed coordinate values related to the 1983 and the 1990 North American Datum Adjustment shall conform to the following requirements:
 - i. All final plats shall identify all horizontal and vertical geodetic control monuments as described above located within 500 feet of the proposed plat boundary.
 - ii. All plats shall have a minimum of three permanent reference monuments per 40 acres of platted subdivision, which shall have state plane coordinates established from the 1983 and the 1990 North American Datum Adjustment delineated on the plat and shall be tied directly to the plat boundaries.
 - iii. All plats shall have a minimum of two benchmarks located and described with the plat that shall be projected from North American Vertical Datum, 1988, or later.
 - iv. The basis of bearings for all plats shall be grid north as established from the county control densification survey and state plane coordinate system or National Geodetic Survey Horizontal Control Network.
 - v. The state plane coordinates and bearing basis shall be established by conducting a self-closing traverse between two horizontal geodetic control monuments. Each traverse shall meet or exceed third order class one standards of accuracy as described in the most recent version of the Standards and Specification for Geodetic Control Network (SSGCN), as set forth by the Federal Geodetic Control Committee. When a development contains multiple units, a major control traverse tied to two horizontal geodetic control monuments may be submitted with the first phase, with subsequent units being tied to this control traverse.
 - vi. A traverse sheet identifying the field angles, permanent reference points, distances and the adjustments shall be submitted on 8½-inch by 11-inch paper with the plat submitted for final development review. Copies of the field notes shall also be submitted. All documents shall be signed and sealed by a surveyor.
 - vii. All geodetic monuments, including traverse stations set for the county control densification survey, that fall within the limits of a development shall be shown on the development plan

and construction plans. All geodetic monuments that are in danger of being disturbed or destroyed shall be referenced by a surveyor prior to the start of construction and reset by a surveyor after the construction is complete. If it is not practical to reset the geodetic monument in its original position, an off-set monument may, with the approval of the city manager or designee, be set. The referencing and resetting of a geodetic monument shall be in accordance with the specifications set forth in Article 2.1 of the SSGCN. Traverse stations shall require an accuracy of third order class one and primary stations and their Azimuth marks shall require second order class one accuracy standards. The surveyor who resets the geodetic monument shall be responsible for the preparation and submittal of all documents necessary for the notification of the state department of environmental protection, city engineer, the county property appraiser's office and any other appropriate government agency. Notification shall include, but not be limited to, a complete description of the geodetic monument with all its accessories, an accurate how-to-reach description, the date of last station recovery, the name of the person recovering monumentation, and the address of the recovery party. This work shall be performed prior to the final inspection and/or acceptance of the development.

- viii. Any person who disturbs or destroys a geodetic monument shall be fully responsible for the expense of having the monument reset by a surveyor. The city may, at the expense of the person responsible for disturbing or destroying the monument, have a surveyor reset the geodetic monument in accordance with the specifications set forth in Article 2.1 of the SSGCN.
- ix. For purposes of this section, a surveyor means a person who is registered to engage in the practice of surveying and mapping under F.S. Ch. 472.

4. *Review.*

- a. *Staff review.* Prior to final plat approval, city staff and the city attorney's office shall review the proposed plat and supporting documents. If the proposed plat and supporting documents meet the technical requirements of this chapter and other applicable laws and ordinances, the departments shall approve the plat as to the requirements within their areas of responsibility.
 - b. *City commission review.* If the final plat is consistent with the design plat as approved by the city commission, meets all requirements of this chapter, and otherwise complies with all applicable laws and ordinances, it shall be forwarded to the city commission for final consideration. Upon approval, the final plat shall bear certification of the approval by the **clerk of the city commission**.
5. *Recording.* Upon approval of the final plat by the city commission, the original linen or stable base film tracing of the final plat, any required covenants or deed restrictions, and the declaration of condominium if the subdivision is a condominium development, shall be recorded with the clerk of the circuit court by the subdivider with all recording fees paid by the subdivider within 15 calendar days from the date the final plat has been returned to the subdivider by city staff. Recording the approved final plat shall constitute a final development order. Within 15 calendar days from the date of recording, three Mylar copies of the recorded plat and three paper copies of the recorded plat signed and sealed by the clerk of the circuit court shall be submitted to the city.

(Ord. No. 170831 , § 2, 4-5-18)

Sec. 30-3.39. Security for subdivision improvements.

- A. *Construction security.* Except as otherwise provided in this section, no final plat of any subdivision shall be approved by the city unless security is filed with the city to secure the construction and completion of the required subdivision improvements in a satisfactory manner within 12 months from the date of final plat approval. If the subdivider fails to construct and complete the required subdivision improvements within the required time frame, the city shall use the security to complete the required subdivision improvements. In determining the cost of the improvements for which security is required, improvements otherwise covered by a separate bond or security arrangement between the subdivider and the city and those improvements already constructed and approved by the director of public works shall not be included. The form of security shall be one of the following:
1. *Surety bond.* A surety bond executed by a surety company authorized to do business in the state with a rating of not lower or less than A-XII as rated by A.M. Best Company, Inc., an independent national rating service for surety companies. The surety bond shall be enforceable by and payable to the city in a sum at least equal to 120 percent of the total cost of the required subdivision improvements provided in the subdivision as estimated by the subdivider's engineer and verified and approved by the directors of public works and Gainesville Regional Utilities. The surety bond shall be first approved by the city attorney as to form and legality prior to its submission with the proposed final plat to the city commission for approval and shall be executed by both the subdivider and the party or parties with whom the subdivider has contracted to perform the work and construct the improvements.
 2. *Cash deposit.* A cash deposit with the city in the same amount that would be required for the surety bond, which cash shall be deposited with the director of management and budget of the city and held under the same conditions as are required in a surety bond. Such deposit will be held for the developer and, in the event of any nonperformance by the developer as required by the ordinances of the city, will be used by the city to complete the required subdivision improvements. During construction, upon the request of the subdivider, and upon inspection and approval of construction and costs thereof by the city, the city shall refund to the subdivider an amount equal to the approved costs for such improvements; provided, at no time shall the balance of the cash deposit with the city be reduced to less than 30 percent of the estimated costs of the subdivision improvements until all the subdivision improvements are completed and so certified to by the city. Interest earned on all such cash deposits with the city shall be for the account and to the credit of the person or persons making such deposit.
 3. *Letter of credit.* Deposit with the city and place with the city manager or designee an irrevocable and unconditional letter of credit by a Florida bank. The letter of credit shall be for an amount equal to 120 percent of the estimated costs of the required subdivision improvements. The letter of credit shall remain with the city as a valid letter of credit until the city is satisfied that all construction of required subdivision improvements has been completed in accordance with plans and specifications and that all other provisions of this chapter relating thereto have been fully complied with.
 4. *Construction loan agreement.*
 - a. Deposit with the city a construction loan agreement in the amount of at least 120 percent of the estimated cost of the required subdivision improvements, which agreement shall be entered into by a recognized lending institution with the subdivider for the benefit of and satisfactory to the city, providing that:
 - i. The lending institution will make payments on the proceeds of the loan to the city if the subdivision improvements are not completed and approved by the city within the time required;

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- ii. No payments of proceeds of the portion of the loan reserved for improvements shall be made to anyone until the city has approved the payment, which approval will be given if work is accomplished in accordance with approved plans and specifications and ordinances of the city; and
 - iii. At no time will the loan proceeds be expended by that lending institution in excess of 90 percent of the estimated costs of the required subdivision improvements until all the improvements are completed and so certified to by the city.
 - b. Deposit with the city a construction loan agreement in the amount of at least 100 percent of the estimated cost of the required subdivision improvements, which agreement otherwise meets the requirements of Subsection a. above, and an unconditional guaranty from the subdivider in the amount of at least 20 percent of the estimated cost of the required subdivision improvements that meets the following requirements:
 - i. Absolutely and unconditionally, jointly and severally, guarantees to the city the full and prompt payment of the amount set forth in the guaranty that will be used by the city to complete the required subdivision improvements, and the complete performance of the subdividers of all conditions and requirements to be performed by the subdivider under the City Code;
 - ii. Unconditionally, jointly and severally, agrees to pay all reasonable expenses and charges, legal fees and other fees (including attorney's fees and costs, including court costs at trial, appeal or bankruptcy proceeding) paid or incurred by the city in enforcing the unconditional guaranty;
 - iii. Jointly and severally agrees to indemnify and hold harmless the city, its elected and appointed officers, employees, and agents from any loss suffered or occasioned by the failure of the subdivider to satisfy its obligations to third parties arising out of the subdivision of the land;
 - iv. Binds the guarantors and their successors and assigns, and inures to the benefit of the city; and
 - v. Makes such other representations and warranties requested by the city manager or designee to protect the interests of the city.
 - 5. *Combination.* Use a combination of the allowable security types as provided for in this section in order to reach the total of 120 percent of estimated costs of required subdivision improvements.
- B. *Conditional final plat.*
- 1. In lieu of the security requirements of this section, the city commission may approve a conditional final plat, where approval of the plat is conditioned on the subdivider proceeding with installation of the required subdivision improvements and fully completing the improvements, in full accordance with approved plans and specifications and the ordinances of the city, within two years of the date of conditional final plat approval. The plat shall not be recorded, but shall be retained by the clerk of the commission until the city manager shall have certified that all required subdivision improvements have been completed in accordance with approved plans and specifications and ordinances of the city and the same has been approved by the city commission. Upon certification by the city manager and upon proof by title insurance or other similar assurance to the satisfaction of the city that there are no liens or possibilities of liens on the subdivision improvements or on the property to be dedicated to the public, and that the dedicator has clear fee title thereto, the city shall approve the final plat and accept the dedication of the public right-of-way easements, and other dedicated portions as previously shown on the prior approved plat as set out in this chapter, and the subdivider shall record the plat and provide copies as specified in section 30-3.37.

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2. No building permits shall be issued on property within the boundaries of the subdivision plat until the plat shall have been approved and accepted by the city commission and placed on record in the public records of the county.
 3. During construction the subdivider may, upon the posting of a bond or other such security for the cost of the uncompleted improvements, have a prior conditional approval converted to final approval and acceptance provided that all other requirements and conditions of this chapter applicable to final plat acceptance have been met.

C. *Maintenance security.*

1. Under any arrangement for subdivision development within the city, the subdivider is obligated to the city for any necessary repair of all required subdivision improvements under the ordinances of the city for the period of one year following the date the city accepted the improvements for maintenance. During the one-year period, the subdivider shall provide the city with security in a form set forth in this section in an amount equal to 15 percent of the costs of the required subdivision improvements, which may be used by the city to pay the costs of any necessary repairs and maintenance on the subdivision improvements during the one-year period.
2. In those developments where lands and improvements remain under private common ownership, instruments relating to the use and maintenance of such areas and improvements shall be required. The city may require the establishment of an appropriate entity and the execution and recording of any appropriate legal instrument necessary to ensure the maintenance, protection, and preservation of common areas designated on the plat. The title to all land and improvements that are shown on the plat as common areas, private roads, etc., shall be held and continue to be held so as to ensure their proper maintenance and care and to permit and ensure their continued use as intended in the approved plat. The instruments shall include means legally enforceable by the city, the subdivider and his/her successors to guarantee payment of such sums of money as are necessary for the maintenance; and all conveyances or transfers of any interest in any of the property of the development shall be legally encumbered of record so as to guarantee the continued use of the common areas and roads as contemplated by the plat and the guarantee of the payment of the cost of the maintenance.

Sec. 30-10.8. Vested rights determination process.

- A. *Application for vested rights determination.* Any person claiming vested rights to develop property shall submit to the city a sworn application for a vested rights determination. The application shall be on a form provided by the city, and shall include the following information:
1. The name, signature and address of all owners of the property;
 2. The name and address of the applicant(s), who shall be the owner(s) or an agent authorized by affidavit to apply on behalf of the owner(s);
 3. A legal description and survey of the subject property;
 4. A copy of any approved and unexpired final development orders, which may include a final site plan, final subdivision plat or building plan;
 5. Identification by specific reference to any ordinance, resolution or other action of the city, or failure by the city to act, upon which the applicant relied and which the applicant believes supports the vested rights claim;
 6. A statement of facts that the applicant intends to prove in support of the application; and
 7. Such other relevant information that the city may request.
- B. *Staff determination.*
1. *Complete applications.* No later than ten calendar days following the date of receiving an application, the city manager or designee shall make a written determination as to whether the application is complete in accordance with this division.
 2. *Staff decision.* No later than 30 calendar days following the date of the city manager or designee's determination that an application is complete, the city manager or designee shall review the application and make a written determination whether the application clearly and unequivocally has vested rights in accordance with the criteria for presumptive or nonpresumptive vesting. No later than seven calendar days following the date of the city manager or designee's written determination of vested rights, the city manager or designee shall provide the applicant written notification of the determination. The applicant shall have the right to rely upon such written notification that the proposed development is vested; such determination that the development is vested shall be final and not subject to administrative appeal, revocation or modification.
- C. *Appeals.*
1. *Purpose.* It is the purpose of this section to provide an administrative process for appealing a written decision of the city manager or designee that denies vested rights. In particular, it is intended that such administrative relief be provided in the most professional, objective, and equitable manner possible through the adjudication of matters as provided herein by the land use hearing officer (hearing officer) provided by this chapter. No party shall be deemed to have exhausted his or her administrative remedies for the purpose of seeking judicial review unless the party first obtains review by a hearing officer as provided herein.
 2. *Standard of review.* The hearing officer's review shall be de novo, meaning the review is not limited to the record that was before the city manager or designee or limited to the first-tier certiorari standard of review. However, if the record that was before the city manager or designee is full and complete, the hearing officer may determine that the record is the only evidence that is necessary. The hearing officer may also determine that additional evidence and oral or written testimony, including cross examination, is necessary to properly evaluate the city manager or designee's decision.

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3. *Appeal process.* The applicant may appeal to a hearing officer a decision of the city manager or designee that denies vested rights. The appeal process shall be as follows:
 - a. No later than 30 calendar days following the date of the city manager or designee's written determination of vested rights, the applicant may appeal to a hearing officer by filing a notice of appeal with the city manager or designee together with a nonrefundable filing fee of \$500.00. The notice of appeal shall set forth in detail the basis of the appeal.
 - b. All expenses associated with the hearing officer appeal process, except attorney fees, shall be the responsibility of the nonprevailing party.
 - c. The city shall accurately and completely preserve all testimony in the proceeding, and, at the request of any party, it shall make a full or partial transcript or existing hearing record available at no more than actual cost.
 - d. In any case where a notice of appeal has been filed, the decision of the city manager or designee shall be stayed pending the final determination of the case.
 4. *Hearing process.* The hearing before the hearing officer shall be conducted as follows:
 - a. The hearing officer shall set forth at the outset of the hearing the order of the proceedings and the rules under which the hearing will be conducted.
 - b. The order of presentation at the hearing shall be as follows:
 - i. Receipt of any exhibits or records of the city manager or designee.
 - ii. Opening statements by the parties.
 - iii. Appellant's case.
 - iv. Respondent's case.
 - v. Rebuttal by appellant.
 - vi. Summation by respondent.
 - vii. Summation by appellant.
 - viii. Conclusion of the hearing by the hearing officer.
 - c. The city manager or designee's records, including all exhibits, shall be received and constitute a part of the record.
 - d. The hearing officer shall have the authority to determine the applicability and relevance of all materials, exhibits, and testimony and to exclude irrelevant, immaterial, or repetitious matter.
 - e. The hearing officer shall administer oaths to witnesses.
 - f. The cross examination of witnesses shall be permitted, in a reasonable amount as determined by the hearing officer.
 - g. The time for presentation of a case shall be determined by the hearing officer.
 - h. The hearing officer may allow the parties to submit written findings of fact and conclusions of law following the hearing, and shall advise the parties to the timetable for so doing if allowed.
 5. *Hearing officer decision.* No later than 30 calendar days following the date of the appeal hearing, the hearing officer shall file with the city manager or designee, with a copy to the applicant and **the clerk of the commission**, a written determination that includes appropriate findings of fact, conclusions of law, and decisions in the matter of the appeal. The decision of the hearing officer, which may affirm, affirm with conditions, or reverse the decision of the city manager or designee, shall be based upon the

criteria for presumptive or nonpresumptive vesting as established in this division, and shall be guided by the Comprehensive Plan, this chapter, and established case law. The decision of the hearing officer shall be final, subject to judicial review.

6. *Judicial review.* Judicial review of the hearing officer's decision is available to the property owner and the city and shall be by common-law certiorari to the Eighth Judicial Circuit Court. In any case where judicial review is sought, the decision of the hearing officer shall be stayed pending the final determination of the case.