

City of
Gainesville

Inter-Office Communication

Planning Division
x5023, FAX x3259, Station 12

Item No. 6

TO: City Plan Board

DATE: August 20, 1998

FROM: Planning Division Staff

SUBJECT: Petition 154TCH-98PB, City Plan Board. Amend the City of Gainesville Land Development Code regarding notice of hearings on Plan Board, Development Review Board and Board of Adjustment petitions, and modifying the quasi-judicial procedures.

Recommendation

Planning Division staff recommends approval of Petition 154TCH-98PB.

Explanation

The City Commission directed planning staff and the City Attorney to amend the procedures for adopting land use and zoning ordinances. The amendments as presented in Attachment 1, will bring the City ordinance adoption process in line with State of Florida requirements. The proposed changes will not alter the public participation process for the Plan Board. However, the change will make the Plan Board's recommendation more important than in the past. Under the new process the vote of the Plan Board will determine whether a petition will go directly to an ordinance adoption hearing or to a public hearing with the City Commission. The proposed changes effectively reduce the number of times an item will be heard by the City Commission by eliminating the City Commission public hearing. During the City Commission adoption process, small scale land use amendments will have one adoption hearing and large scale amendments will have two adoption hearings. The new process should be beneficial to both the public and the private sector in that it will speed up the process for non-controversial changes.

Respectfully submitted,

Ralph Hilliard

Ralph Hilliard
Planning Manager

ORDINANCE NO.

0-98-77

An ordinance of the City of Gainesville, Florida amending Chapter 30 of the Code of Ordinances relating to quasi-judicial hearing procedures; providing directions to the codifier; providing a severability clause; providing an effective date.

WHEREAS, the City Plan Board authorized the publication of notice of a Public Hearing that the text of the Land Development Code of the City of Gainesville, Florida, be amended; and

WHEREAS, notice was given and publication made as required by law and a Public Hearing was then held by the City Plan Board on August 20, 1998; and

WHEREAS, at least 10 days notice has been given prior to first reading by publication in a newspaper of general circulation notifying the public of this proposed ordinance and of a Public Hearing in the Auditorium of City Hall in the City of Gainesville; and

WHEREAS, a Public Hearing was held pursuant to the published notice described at which hearing the parties in interest and all others had an opportunity to be and were, in fact, heard;

NOW THEREFORE, be it ordained by the City Commission of the City of Gainesville, Florida:

Section 1. Section 30-6, of the Gainesville Code of Ordinances is renumbered as Section 30-347.1 and made a part of article X Administration; and is amended to read as follows:

Article X Administration
Division 1 Hearings and Appeals

Sec. 30-347.1 6 Filing and review of petitions for changes or amendments.

(a) *Pre-application conference.* It is recommended that anyone intending to file a petition for amendments to the future land use map or zoning map atlas, or text of the comprehensive plan or this chapter, meet with the department of community development prior to filing the petition, in order to discuss the amendment and petition process. No person may rely upon any comment concerning a proposed amendment, or any expression of any nature about the proposal made by any participant, at the pre-application conference as a representation or implication that the proposal will be ultimately approved or rejected in any form.

(b) *Procedures for filing and review.*

- (1) A petition for rezoning of land and changes to the future land use map may be filed by an owner thereof or by any person having a legal or equitable interest therein. If there are multiple owners, each shall be named on the petition. If an agent represents the owner(s) in this proceeding he/she shall be so authorized by affidavit from the owner(s). Petitions for subdivisions and street vacations shall be filed in accordance with Article VII.
- (2) A petition for a text amendment may be filed by any citizen or owner of land in the city.
- (3) Petitions for changes and amendments shall be filed on forms provided by the city and addressed to and filed with the department of community development. The petitions shall contain or be accompanied by all pertinent information which may be required by the city plan board for its proper consideration of the matter.
- (4) When reviewing amendments to the text of this chapter, the city plan board may receive and consider the comments and concerns of other boards serving the city commission which affect the development process, such as the development review board and the historic preservation board.
- (5) After consideration of ~~a proposal or~~ a petition for a street vacation, rezoning of land, change in the future land use map, or text amendment to the land development code or comprehensive plan

1 the ~~city plan board~~ appropriate reviewing board shall transmit the
2 petition and its recommendation thereon either to the city
3 commission or the city attorney, as follows:

4
5 a) If either the Department of Community Development or the
6 appropriate reviewing board recommends denial of the petition,
7 then the petition will be forwarded to the City Commission for
8 approval, denial, approval with amendment, or remand to the board
9 for further consideration. If the City Commission approves the
10 petition as submitted or with amendments, the City Attorney is
11 authorized to prepare the appropriate ordinance in accordance with
12 law.

13
14 b) If the Department of Community Development and the
15 appropriate reviewing board recommend approval of the petition as
16 submitted or with amendments, the petition will be forwarded to the
17 City Attorney who is authorized to prepare the appropriate
18 ordinance in accordance with law.

19
20 (6) After consideration of a proposal for a petition for a design plat-~~or~~
21 ~~street vacation~~, the appropriate reviewing board shall transmit the
22 petition and its recommendation thereon to the city commission.

23
24 (7) No recommendation on a petition ~~for a change or amendment~~ shall
25 be made ~~by the city plan board or development review board~~ to the
26 city commission unless ~~and until~~ a public hearing as prescribed in
27 this chapter has been held by the ~~city plan board or development~~
28 appropriate reviewing board.

29
30 (8) Proposals originated by ~~originating with~~ the city commission or
31 initiated by the city plan board shall be processed in the same
32 manner as provided for petitions in the preceding paragraphs.

33
34 (9) The quasi-judicial proceedings required by law on items regulated
35 by this Section shall be conducted by the city commission. The city
36 commission shall conduct the quasi-judicial proceeding at either
37 consideration of the plan board petition or first reading of the
38 ordinance, as applicable. The recommendations of the City's
39 departments or other regulatory agencies and the appropriate
40 reviewing boards shall be included and become a part of the record
41 before the city commission.

1 **Section 2. Section 30-7, of the Gainesville Code of Ordinances is ~~to~~**
2 **~~be~~-renumbered as Section 30-347.2 and is amended to read as follows:**

3
4 **Sec. 30-347.2-7. Fees for petitions for changes or amendments.**

5 Fees shall be paid to the city and such payment shall be made at the time of
6 filing petitions with the department of community development in accordance
7 with the schedule set out in Appendix A (Schedule of Fees, Rates and Charges),
8 in the Code of Ordinances of the city.

9
10 **Section 3. Section 30-9, of the Gainesville Code of Ordinances is**
11 **renumbered as Section 30-347.3 and is amended to read as follows:**

12
13 **Sec. 30-347.3 ~~9~~. Basis for recommendations by city plan board on**
14 **proposed changes or amendments.**

15
16 (a) *Zoning ordinance changes.* In reviewing and formulating
17 recommendations to the city commission on requested or proposed
18 changes in the zoning ordinances that are quasi-judicial in nature, the city
19 plan board shall consider and evaluate the changes in relation to all
20 pertinent factors, including the following:

- 21
22 (1) The character of the district and its peculiar suitability for particular
23 uses;
24
25 (2) Conservation of the value of buildings and encouraging the most
26 appropriate use of land throughout the city;
27
28 (3) The applicable portions of any current city plans and programs
29 such as land use, trafficways, recreation, schools, neighborhoods,
30 stormwater management and housing;
31
32 (4) The needs of the city for land areas for specific purposes to serve
33 population and economic activities;
34
35 (5) Whether there have been substantial changes in the character or
36 development of areas in or near an area under consideration for
37 rezoning;
38
39 (6) The goals, objectives and policies of the comprehensive plan; and
40
41 (7) The facts ~~and testimony~~ and reports presented to the city plan
42 board ~~through~~ at public hearings.

- 1 (b) *Future land use map changes.* In reviewing and formulating
2 recommendations to the city commission on requested or proposed
3 changes to the future land use map that are quasi-judicial in nature, the
4 city plan board shall consider and evaluate the changes in relation to all
5 pertinent factors, including the following:
6
7 (1) The goals, objectives and policies of the comprehensive plan.
8
9 (2) An analysis, by community development department staff, of the
10 need for the additional land based on the projected population of
11 the city and the availability of property designated for the land use
12 being requested by the petitioner.
13
14 (3) The location of the site in relation to adjacent uses and other
15 similar uses.
16
17 (4) The potential impact of the proposed use on adopted level of
18 service standards.
19
20 (5) The following criteria shall be used when considering the
21 expansion and creation of additional mixed use low, medium or
22 high intensity areas. All other nonresidential areas shall be
23 evaluated in terms of their location to activity centers and
24 commercial corridors.

Characteristic	Mixed Use Low Intensity	Mixed Use Medium Intensity	Mixed Use High Intensity
Minimum radius	0.5 miles	2 miles	15 miles
Maximum radius	1.25 miles	5 miles	Justified by a market study
Minimum population	2,000	20,000	150,000
Maximum population	10,000	60,000	Justified by a market study
1Percentage of market population	80%	60% or justified by	Justified by a a market study market study
2Mass transit access	Not applicable	Yes	Yes

45 1 The percentage of the market population which must currently reside within the
46 designated radii for the particular category, or which is projected to be

1 accommodated over the next three (3) years using building construction permits
2 and occupancy data.

3 2 As defined in the comprehensive plan.

4 **Section 4. Section 30-10, of the Gainesville Code of Ordinances is**
5 **renumbered as Section 30-347.4 and is amended to read as follows:**

6
7 **Sec. 30-347.4 40. Recommendation by city plan board on proposed**
8 **change or amendment required; exception.**

9
10 (a) The city commission shall not make comprehensive plan and zoning text
11 amendments or changes to zoning districts boundaries and future land use map
12 changes unless the proposed change(s) has/have been considered and a
13 recommendation has been made by the city plan board.

14
15 (b) The city commission may, however, act on any such change or
16 amendment without a recommendation from the city plan board if the board has
17 not acted on the matter within forty-five (45) days of the date of the first regular
18 meeting of the city plan board after a petition or proposal for a change or
19 amendment has been filed with or received by the city manager or city
20 manager's designee.

21
22 **Section 5. Section 30-11, of the Gainesville Code of Ordinances is**
23 **renumbered as Section 30-347.5 and is amended to read as follows:**

24
25 **Sec. 30-347.5 44. Change in ~~Enlargement of~~ area proposed for rezoning.**

26
27 In case of a petition for a change in the zoning or land use of property, the city
28 plan board shall consider whether the area described in the original petition
29 should be enlarged or reduced in order to reflect the interests of the city and to
30 correspond with the goals, objectives and policies of the comprehensive plan.
31 The city plan board shall study and recommend to the city commission such
32 enlargement or reduction, according to the terms of this chapter, and such
33 enlargement or reduction shall be processed as a rezoning or land use change
34 in accordance with the procedures in section 30-6 and those for public hearings
35 in Article X. of this chapter.

36
37 **Section 6. Section 30-12, of the Gainesville Code of Ordinances is**
38 **repealed.**

39
40 **~~Sec. 30-12. Protest of change in zoning map or future land use map.~~**

41
42 ~~In order to protest a change in the zoning map atlas or future land use map to an~~
43 ~~area involving five (5) percent or less of the total land area of the city, the~~

1 | ~~following procedure shall be followed. The city manager or designee shall~~
2 | ~~calculate the percentage of owners of property within four hundred (400) feet of~~
3 | ~~the area included in the proposed change who have signed a protest of the~~
4 | ~~proposed change, and will supply this information, along with citizen comments,~~
5 | ~~to the city commission. Publicly owned right of way, although included in~~
6 | ~~calculating the distance of four hundred (400) feet referred to in the previous~~
7 | ~~sentence, shall not be included in determining the total of the area lying within~~
8 | ~~four hundred (400) feet of the property involved in the proposed change and the~~
9 | ~~percentages referred to.~~
10 |

1 **Section 7. Section 30-351, of the Gainesville Code of Ordinances is**
2 **renumbered as Section 30-347.76 and is amended to read as follows:**

3
4 **Sec. 30-347.6 351. Withdrawal of applications; ~~notification procedures.~~**

5
6 (a) Withdrawal of applications. Any application for any action provided by this
7 chapter may be withdrawn by the applicant. However if notice has been given,
8 the application must be withdrawn by the applicant at a public hearing, and, for
9 purposes of refileing a land use or zoning map petition, a withdrawn application
10 shall be limited as if it were denied as prescribed in section 30-347.8 8. Fees
11 paid shall not be refundable if any expense has been incurred by the city for
12 public notice.

13
14 **Section 8. Section 30-8, of the Gainesville Code of Ordinances is**
15 **renumbered as Section 30-347.87 and is amended to read as follows:**

16
17
18 **Sec. 30-347.7 8. Limit on petitions relating to same property as previous**
19 **petition or rezoning.**

20
21 (a) When the city commission has taken action to deny a petition for a land
22 use change or rezoning the city plan board shall not consider any further
23 petition to any part of the same property for a period of twelve (12) months
24 from the date of the action. If a comprehensive plan amendment is
25 necessary for a rezoning to planned development the foregoing one-year
26 limitation may be waived by a simple majority of the city commission.

27
28 (b) Whenever the city commission has changed the zoning or land use of
29 property by an ordinance amendment, the city plan board shall not
30 consider any petition for rezoning of any part of the same property for a
31 period of twelve (12) months from the date of the action.

32
33 (c) The city commission may waive the above time limitations by the
34 affirmative vote of four (4) commissioners, provided thirty (30) days have
35 elapsed since the action of the commission to deny the original request,
36 and if the city commission deems such action necessary to prevent an
37 injustice or facilitate the proper development of the city.

38
39 **Section 9. Section 30-13, of the Gainesville Code of Ordinances is**
40 **renumbered as Section 30-347.98 and is amended to read as follows:**

41
42 **Sec. 30-347.8 43. Failure of city commission to act on proposed change**
43 **or amendment.**

1
2 If a petition or recommendation for a change or amendment is not acted upon
3 finally by the city commission within six (6) months of the date upon which the
4 report of the city plan board is filed with the city commission, the petition shall be
5 deemed denied without prejudice. However, no petition shall be deemed denied
6 if the city commission has continued its consideration to a date certain, or has
7 stayed action on the petition by enactment of a moratorium ordinance.

8
9 **Section 10. Section 30-348, of the Gainesville Code of Ordinances is**
10 **hereby amended to read as follows:**

11
12
13 Sec. 30-348. Quasi-judicial Administrative hearings proceedings by appointed
14 boards.

15
16 ~~—Each A quasi-judicial administrative hearing proceeding shall conform to the~~
17 ~~following procedures, as supplemented required by law, rule or decision. All~~
18 ~~Development orders that are quasi-judicial in nature, including, but not limited to,~~
19 ~~the consideration of development plans review, subdivision plats review, street~~
20 ~~vacations vacancies, special use permits review, certificates of appropriateness~~
21 ~~and variances (hereinafter "development orders") hearings and other~~
22 ~~administrative actions shall be considered quasi-judicial administrative hearings~~
23 ~~proceedings.~~

24
25 (1) Burden and nature of proof. ~~The applicant for any development permit~~
26 ~~must prove by a preponderance of the evidence that the proposal satisfies the~~
27 ~~applicable requirements and standards of this chapter, the comprehensive plan,~~
28 ~~and other federal, state, and regional laws and regulations as applicable.~~

29
30 The burden of proof shall be as required by law.

31
32 (2) ~~Order of proceedings~~ Rules of Procedure.

33
34 ~~—a.—The development review board or other appropriate board shall by~~
35 ~~rule or by-laws adopt procedures for the conduct of quasi-judicial proceedings.~~
36 These procedural rules shall be subject to review and approval of the City
37 Commission. ÷

1 (3) Record

2
3 The record of the quasi-judicial proceeding shall contain the following:

4 1. The reports and recommendations of the City's departments or
5 other regulatory agencies;

6 2. The reports and recommendations of the appropriate governmental
7 reviewing boards.

8 3. Physical evidence and exhibits admitted into evidence at the quasi-
9 judicial proceeding; and

10 4. Such other documentation and competent substantial evidence
11 including testimony deemed appropriate by the reviewing body at the quasi-
12 judicial proceeding.

13
14 ~~1. Determine whether it has jurisdiction over the application.~~

15
16 ~~2. Determine whether any member must abstain or is disqualified.~~

17
18 ~~b. The board may take official notice of known information related to the~~
19 ~~issue, including:~~

20
21 ~~1. Federal, state and regional law and applicable ordinances,~~
22 ~~resolutions, rules and official policies of the city.~~

23
24 ~~2. Other public records and facts judicially noticeable by law.~~

25
26 ~~c. Matters officially noticed need not be established by evidence and are~~
27 ~~binding to the extent that they are relevant and material. Requests that official~~
28 ~~notice be taken shall be made on the record and an opportunity for rebuttal shall~~
29 ~~be given to opposing parties. The board may take notice without prompting or~~
30 ~~suggestion of matters listed in subsection (2)b. of this section and shall state all~~
31 ~~matters officially noticed for the record.~~

32
33 ~~d. Board members may individually view the site of the proposed~~
34 ~~development with or without notification to the parties, but, after the visit, shall~~
35 ~~place the time, manner and circumstances of the view in the record.~~

36
37 ~~e. Staff, the developer, and interested persons may present information.~~
38 ~~Unless the board specifies otherwise, a question from an interested person must~~
39 ~~be directed to the board, which will then direct the question to the person~~
40 ~~submitting testimony.~~

41
42 ~~f. Before the hearing has concluded, the board shall restate the issues~~
43 ~~and comment upon the law and facts pertaining to the decision, and if~~

1 opportunity for rebuttals is provided, may ask additional questions of any person
2 who has testified or presented information.

3 ~~— (3) Findings and order. Unless otherwise stated in this chapter or the board~~
4 ~~and the developer agree to an extension, the board shall, within ten (10) working~~
5 ~~days of the hearing, prepare an order including:~~

6 ~~— a. A statement of the applicable criteria and standards against which the~~
7 ~~proposal was tested.~~

8 ~~— b. Findings of facts which established compliance or noncompliance~~
9 ~~with the applicable criteria and standards, regulations of this chapter, the~~
10 ~~comprehensive plan, and other federal, state and regional laws and regulations~~
11 ~~as applicable.~~

12
13 ~~— c. The reasons for a conclusion to approve, conditionally approve, deny~~
14 ~~or make other decisions permitted by this chapter.~~

15
16 ~~— (4) Record of proceedings.~~

17
18 ~~— a. All proceedings shall be recorded stenographically or electronically~~
19 ~~and shall be transcribed if required for review or if ordered by the board.~~

20
21 ~~— b. The board shall, where practicable, include in the hearing record~~
22 ~~each item of physical or documentary evidence presented and shall mark each~~
23 ~~item to show the identity of the person who presented it. Each exhibit received~~
24 ~~into evidence shall be retained in the hearing file until after the applicable appeal~~
25 ~~period has expired, when it may be returned to the person identified thereon, or~~
26 ~~otherwise disposed of in accordance with state law.~~

27
28 ~~— c. The findings and order shall be included in the record.~~

29
30 **Section 11. Section 30-349, of the Gainesville Code of Ordinances is**
31 **amended to read as follows:**

32
33 **Sec. 30-349. Legislative hearings.**

34
35 Any map comprehensive rezoning of the City or change in land use or or text
36 amendment to the comprehensive plan or this chapter shall be considered a
37 legislative hearing or other matters deemed legislative by law. This shall not
38 include small scale amendments as defined in Chapter 163, Florida Statutes.
39 Each legislative hearing shall conform to the following requirements:

40
41 (1) Notice. Notice that complies with the requirements of state law shall be
42 given and as otherwise prescribed in this chapter.

1 (2) Conduct of hearing. The public hearing shall at ~~as~~ a minimum:

- 2
- 3 a. Comply with the requirements of state law.
- 4
- 5 b. Present the department's analysis of the proposed decision.
- 6 c. Present the department's summary of reports by other agencies.
- 7
- 8 d. Permit any person to submit ~~written recommendations and comments~~
9 documents before or during the hearing.
- 10 e. Permit a reasonable opportunity for interested persons to make oral
11 statements.
- 12

13 **Section 12. Section 30-350, of the Gainesville Code of Ordinances is**
14 **renumbered as Section 30-352.1 and is amended to read as follows:**

15

16 Sec. 30-350 2.1. Appeals from Development Review Board.

17

18 (a) Development Plan Appeals. ~~from decisions of development review board.~~
19 A developer may appeal a final development order ~~the decision on a~~
20 development plan by the development review board reached at the conclusion of
21 an administrative hearing to a ~~the~~ hearing officer by filing a notice of appeal with
22 the department of community development within fifteen (15) working days of the
23 final development order decision.

24

25 (1) Application for appeal. The application for appeal shall contain at
26 minimum the following items, plus any additional items required in specific
27 sections of this chapter:

- 28
- 29 a. A statement of the decision to be reviewed, and the date of the
30 decision.
- 31
- 32 b. A statement of the interest of the person seeking review.
- 33
- 34 c. The specific error alleged as the grounds of the appeal.
- 35

36 (2) Stay during appeal. An appeal shall stay all proceedings in furtherance of
37 the action appealed from until the findings of the hearing officer are rendered
38 and any required action is taken by the original decision-maker.

39

40 (3) Appellate hearing. Unless otherwise indicated in this chapter, within forty-
41 five (45) days of an appeal being filed, the hearing officer assigned to hear the
42 appeal shall conduct a hearing open to the public in compliance with the
43 following procedures as supplemented where necessary:

1
2 a. Scope of review.
3

4 1. The hearing officer's review shall be limited to the record and
5 applicable law.
6

7 2. The hearing officer shall have the authority to review questions of
8 law only, including interpretations of this chapter, and any rules and regulations
9 implementing this chapter. For this purpose, an allegation that a decision of the
10 decision-maker is not supported by competent substantial evidence in the record
11 as a whole is deemed to be a question of law. The hearing officer may not
12 reweigh the evidence but must decide only whether competent substantial
13 evidence supports the decision under review.
14

15 b. Authority of hearing officer. A hearing officer shall have the authority:
16

17 1. To request briefs to be filed on behalf of any party and prescribe
18 filing and service requirements.
19

20 2. To hear oral argument on behalf of any party.
21

22 3. To adjourn, continue or grant extensions of time for compliance
23 with these rules, either on his/her own motion or upon application of the party,
24 provided no requirement of law is violated.
25

26 4. To dispose of procedural requests or similar matters, including
27 motions to amend and motions to consolidate.
28

29 5. To keep a record of all persons requesting notice of the decision
30 in each case.
31

32 c. Improper influence.
33

34 1. No person who is party, nor a person who is reasonably likely to
35 become a party in the near future, nor anyone appearing on behalf of a party,
36 shall communicate ex parte, i.e., outside a hearing, with a hearing officer
37 concerning any application, pending or proposed; provided, however, a hearing
38 officer may consider requests regarding scheduling of hearings when made in
39 writing.
40

41 2. A person who accepts an appointment as a hearing officer is, for
42 a period of two (2) years from the date of termination as a hearing officer, hereby
43 expressly prohibited from acting as agent or attorney in any proceeding,

1 application or other matter before any commission, board, agent or office of city
2 government, involving property which was the subject of an application which
3 was pending before that person during the person's term as a hearing officer.
4

5 3. A hearing officer shall neither initiate nor consider ex parte, i.e.,
6 outside a hearing, communications concerning a pending or impending
7 proceeding. A hearing officer, however, may obtain the advice of a disinterested
8 expert on law, planning or other subject applicable to a proceeding before
9 him/her if he/she gives notice to the parties of the person consulted and the
10 substance of the advice, and affords the parties reasonable opportunity to
11 respond. Costs and expenses of any expert shall be borne by the party
12 appealing the decision.
13

14 d. Decision of hearing officer and final action.
15

16 1. The hearing officer must affirm each contested decision or find it
17 to be an incorrect interpretation of law or not supported by competent substantial
18 evidence. The hearing officer shall prepare a written opinion stating the legal
19 basis for each ruling. The hearing officer shall submit the opinion to the
20 department, which shall distribute it to the decision-maker and the parties.
21

22 2. When the hearing officer affirms a contested decision pertaining
23 to a final action of a decision-maker, that action shall be deemed to be the final
24 action of the decision-maker and shall be subjected to no further review under
25 this article.
26

27 3. When the hearing officer finds any decision to be an incorrect
28 interpretation of law or not supported by competent substantial evidence, that
29 decision shall be referred back to the decision-maker for reconsideration in light
30 of the hearing officer's opinion. The decision-maker shall reconsider its decision
31 based solely on the record and the opinion of the hearing officer. If the decision-
32 maker reaffirms the original decision, it shall be deemed to be the final action of
33 the decision-maker and shall be submitted to no further review under this article.
34

35 e. Custody of books and papers. The department of community
36 development shall be the custodian of all documents, including the application,
37 the hearing officer's decision, and the record of the proceedings.
38

39 ~~—(b) Appeals to board of adjustment. Appeals to the board of adjustment shall~~
40 ~~be conducted according to the provisions of section 30-354.~~

41
42 ~~—(c) Other appeals. Other appeals shall be conducted in accordance with the~~
43 ~~specific requirements of this chapter.~~

1
2 (da) Judicial review. Any final order determination of the board may be
3 appealed to the appropriate court within thirty (30) days of the ~~decision order~~ by
4 an action in the nature of a writ of certiorari

1 **Section 13. Section 30-351, of the Gainesville Code of Ordinances is**
2 **amended to read as follows:**

3
4 Sec. 30-351. ~~Withdrawal of applications;~~ Notification procedures for petitions.

5
6 (a) Notice by newspaper. Unless otherwise provided by law, notice of a
7 hearing pursuant to this Division shall be provided in the legal notice section of a
8 newspaper of general circulation in Alachua County. ~~Withdrawal of applications.~~
9 ~~Any application for any action provided by this chapter may be withdrawn by the~~
10 ~~applicant. However if notice has been given, the application must be withdrawn~~
11 ~~by the applicant at a public hearing, and, for purposes of refiling a land use or~~
12 ~~zoning map petition, a withdrawn application shall be limited as if it were denied~~
13 ~~as prescribed in section 30-8. Fees paid shall not be refundable if any expense~~
14 ~~has been incurred by the city for public notice.~~

15
16 (b) Notice by mail. Unless otherwise provided by law, ~~regulation or decision,~~
17 addresses for a mailed notice required by this chapter shall be obtained from the
18 latest ad valorem tax records provided by ~~of~~ the county property appraiser. The
19 failure of any person to receive notice shall not invalidate an action if a good faith
20 attempt was made to comply with the notice requirements of this article.

21
22 (c) ~~Notice of hearings on proceedings before the city plan board and city~~
23 commission petitions before city plan board and city commission.

24
25 (1) ~~Text Adoption or amendments of~~ to the comprehensive plan or land
26 development code.

27
28 a. ~~Notice of hearings proceedings~~ before the city plan board and the
29 quasi-judicial proceedings before the city commission which amend the
30 comprehensive plan or element or portion thereof or this chapter, not including
31 amendments that change the actual list of permitted, conditional or permitted
32 uses, as provided in sub-paragraph (3) below shall be published in a newspaper
33 of general circulation in the city at least fifteen (15) days prior to the date of the
34 hearings. The notice shall specify the time and place of hearings and a general
35 description of the matters to be considered at the hearings.

36
37 b. If the petition is filed by a private person or entity, the petitioners shall
38 be given notice of the hearings by letter addressed to the petitioner at the
39 address given in the petition and mailed at least fifteen (15) days prior to the
40 date of the hearings.

41
42 (2) Zoning and land use map designation amendments. ~~Rezoning~~
43 ~~and changes in land use categories.~~

1
2 a. 5% or less: Notice of hearing in which the petition changes the actual
3 zoning and land use map designation for a parcel or parcels of land involving 5%
4 or less of the total land area of the city, the City shall mail each real property
5 owner whose land will be redesigned and all owners of property within four
6 hundred (400) feet of the land affected by the petition shall be given a notice of
7 the hearing by mail. The notice shall be mailed at least fifteen (15) days prior to
8 the date of the hearings. For the purpose of this notification, an owner of
9 property shall be deemed to be the person, who, with their name and address, is
10 shown on the latest ad valorem tax records provided by the county property
11 appraiser. ~~Changes involving less than five percent of total land area of city. If a~~
12 ~~proposed rezoning, or amendment to change a land use category, involves less~~
13 ~~than five (5) percent of the total land area of the city, all owners of property~~
14 ~~whose land will be affected and all owners of property within four hundred (400)~~
15 ~~feet of the land affected by the petition shall be given notice of the hearings by~~
16 ~~mail. The notice shall be mailed at least fifteen (15) days prior to the date of the~~
17 ~~hearings. For the purpose of this notification, an owner of property shall be~~
18 ~~deemed to be the person who, with his/her address, is shown on the most recent~~
19 ~~tax rolls of the county property appraiser. If any of the land within four hundred~~
20 ~~(400) feet is part of any common element of a condominium, notice shall be sent~~
21 ~~to all owner(s) of such common element as shown on the latest tax rolls.~~

22
23 b. More than 5%: Notice of hearing which in the petition changes the
24 actual zoning and land use map designation for a parcel or parcels of land
25 involving more than five percent(5%) of the total land area of the city. ~~Changes~~
26 ~~involving five (5) percent or more of total land area of city. If a proposed~~
27 ~~rezoning, or amendment to change a land use category involves five (5) percent~~
28 ~~or more of the total land of the city, all owners of property whose land will be~~
29 ~~affected by the petition shall be given notice of the hearings by publication of a~~
30 ~~one-fourth- page advertisement in a newspaper of general circulation. The notice~~
31 ~~shall appear in the newspaper at least fifteen (15) days prior to the date of the~~
32 ~~hearings.~~

33
34 (3) Amendment ~~Changes~~ to the list of ~~in~~ permitted use categories
35 allowed by the zoning or land use.

36
37 In cases where the proposed petition alters the actual list of permitted,
38 conditional or prohibited uses within a zoning or land use category, notice shall
39 be given by publication of a one-fourth page advertisement in a newspaper of
40 general circulation in Alachua County at least fifteen (15) days before the
41 hearing date.
42

1 a. ~~Changes involving less than five (5) percent of total land area of city.~~
2 ~~If a change in a permitted use category involves less than five (5) percent of the~~
3 ~~total land area of the city, all owners of property whose land will be affected by~~
4 ~~the petition shall be given notice of the hearings by mail. The notice shall be~~
5 ~~mailed at least fifteen (15) days prior to the date of the hearings. For the purpose~~
6 ~~of this notification, an owner of property shall be deemed to be the person who,~~
7 ~~with his/her address, is shown on the most recent tax rolls of the county property~~
8 ~~appraiser.~~

9
10 ~~b. Changes involving five (5) percent or more of total land area of city. If~~
11 ~~a change in a permitted use category involves five (5) percent or more of the~~
12 ~~total land of the city, all owners of property whose land will be affected by the~~
13 ~~petition shall be given notice of the hearings by a one fourth page advertisement~~
14 ~~in a newspaper of general circulation. The notice shall appear in the newspaper~~
15 ~~at least fifteen (15) days prior to the date of the hearings.~~

16
17 (d) Notice of development plan review.

18
19 (1) ~~Contents.~~ Notice of development plan review shall include:

20
21 a. Concept review;

22
23 b. Preliminary plan and final review for intermediate and major
24 development plans; and

25
26 c. ~~Preliminary and final review for major development plans.~~

27
28 (2) Mailed notice. Notice shall be mailed by the department to the owner
29 of the subject property, and the agent, if applicable, and all persons who,
30 according to the ~~most recent~~ latest tax rolls provided to the city by the county
31 property appraiser, own property within four hundred (400) feet of the property
32 proposed for development. The notice shall be mailed at least fifteen (15) days
33 before the hearing date.

34
35 (3) Posted notice. The property under consideration for a small scale land
36 use or zoning map change involving street vacation or development plan review
37 shall also have a sign posted at least fifteen (15) days prior to the hearing date.
38 The sign shall specify that the property is under consideration for ~~development~~
39 ~~plan~~ review and specify the time, date and place of the public hearing.

40
41 ~~(e) Notice requirements for adoption of ordinances.~~
42

1 ~~—(1) Rezoning. In addition to the requirements of F.S. § 166.041, ordinances~~
2 ~~which rezone specific parcels of private real property shall be enacted pursuant~~
3 ~~to the following procedures:~~

4
5 ~~— a. Ordinances initiated by a petitioner which rezone specific parcels of~~
6 ~~private real property shall be noticed once in a newspaper of general circulation~~
7 ~~in the city at least ten (10) days prior to the first advertised public hearing of the~~
8 ~~ordinance. Additionally, the petitioner shall be given notice by U.S. mail at least~~
9 ~~ten (10) days prior to the first advertised public hearing.~~

10
11 ~~— b. Ordinances initiated by the city which rezone specific parcels of~~
12 ~~private real property shall be enacted pursuant to the procedures provided in~~
13 ~~F.S. § 166.041(3)(c).~~

14
15 ~~—(2) Amendments to land development code. Ordinances initiated by the city~~
16 ~~or a petitioner which change the text of this chapter, except ordinances which~~
17 ~~substantially change permitted use categories in zoning districts, shall be noticed~~
18 ~~once in a newspaper of general circulation in the city at least ten (10) days prior~~
19 ~~to the first advertised public hearing of the ordinance. Additionally, the petitioner,~~
20 ~~if other than the city, shall be given notice by U.S. mail at least ten (10) days~~
21 ~~prior to the first advertised public hearing.~~

22
23 ~~—(3) Changes in permitted use categories in zoning districts. Ordinances~~
24 ~~initiated by the city or a petitioner which substantially change permitted use~~
25 ~~categories in zoning districts shall be enacted pursuant to the procedures~~
26 ~~provided in F.S. § 166.041(3)(c).~~

27
28 ~~—(4) Comprehensive plan amendments. Ordinances which adopt or amend~~
29 ~~the comprehensive plan or element, or any plan or plan amendment which~~
30 ~~changes the permitted uses of land or changes land use categories, shall be~~
31 ~~enacted pursuant to the procedures provided in F.S. Ch. 163, as applicable.~~

32
33 **Section 14. Section 30-351.1, of the Gainesville Code of Ordinances**
34 **hereby created to read as follows:**

35
36
37 **30-351.1 Notice requirements for adoption of ordinances.**

38
39 Notice of ordinances that implement petitions shall be enacted pursuant to
40 law.

1 **Section 15.** It is the intention of the City Commission that the provisions of
2 Sections 1-14 of this ordinance shall become and be made a part of the Code of
3 Ordinances of the City of Gainesville, Florida and that the Sections and
4 Paragraphs of this Ordinance may be renumbered or relettered in order to
5 accomplish such intentions.

6 **Section 16.** If any section, sentence, clause or phrase of this ordinance is held
7 to be invalid or unconstitutional by any court or competent jurisdiction, then said
8 holding in no way affects the validity of the remaining portions of this ordinance.

9 **Section 17.** This ordinance shall become effective immediately upon final
10 adoption.
11

12
13 **PASSED AND ADOPTED** this ____ day of _____, 1998
14

15
16
17 _____
18 PAULA M. DELANEY
19 MAYOR

20
21 ATTESTED BY: _____ APPROVED AS TO FORM AND
22 LEGALITY:
23 KURT M. LANNON MARION J. RADSON
24 CLERK OF THE COMMISSION CITY ATTORNEY
25

26 This Ordinance passed on first reading this ____ day of
27 _____, 1998.
28

29 This Ordinance passed on second reading this ____ day of _____,
30 1998.
31

6. **Petition 154TCH-98 PB** City Plan Board. Amend the City of Gainesville, Land Development Code regarding notice of hearings on Plan Board, Development Review Board and Board of Adjustment petitions, and modifying the quasi-judicial procedures.

Mr. Ralph Hilliard was recognized. Mr. Hilliard indicated that the City Commission had requested that staff and the City Attorney prepare an ordinance to deal with quasi-judicial hearings and the number of hearings per petition presented to the Commission. He noted that the proposed ordinance placed more pressure on the Plan Board and staff to agree on certain points. He reviewed the proposed amendment in detail and noted that there were corrections. He pointed out that section 30-3, line 25 the word should remain "enlargement" rather than "change." He noted that page 8, line 10 should be "33-47" and page 9 line 16, "small scale zoning and land use map changes" had been inadvertently left out. He noted that the changes were based upon state law changes. He discussed the new notification procedure in detail.

There was no board or public comment.

<u>Motion By:</u> Ms. Dowling	<u>Seconded By:</u> Mr. Carter
<u>Moved To:</u> Approve petition 154TCH-98 PB	<u>Upon Vote:</u> Motion Carried 7-0 Yeas: Guy, Shelton, McGill, Barrow, Carter, Dowling, Polshek

