

**PROCEDURES
FOR APPEALS
FROM
LAND USE HEARING
OFFICER
TO THE
LAND USE APPEALS BOARD**

January 2013

LAND USE APPEALS BOARD
APPEAL PROCEDURES

As the person who has filed an appeal of the decision of the Land Use Hearing Officer, you are the Appellant. As the Appellant, you have certain responsibilities to fulfill before the appeal can be heard by the Land Use Appeals Board:

1. The Appellant must provide a notice of hearing (as outlined in LDC 10.05.02.D.2.) to all parties of record (as defined in LDC 10.03.06A.) no later than **20 days prior to the appeal hearing date** by proof of mailing receipt. (included in this packet is a sample notice letter and a sample proof of mailing sheet)

- Parties of record include all persons who were notified of the hearing before the Land Use Hearing Officer by proof of mailing receipt; all persons who submitted documentary evidence to the master file two business days prior to the Land Use Hearing Officer hearing or by proxy during the Land Use Hearing Officer hearing; and, all persons who were present at the hearing before the Land Use Hearing Officer and presented either oral testimony or documentary evidence.
- In the event that a Land Use Hearing Officer's approval is appealed by an opponent, both the applicant and the owner of the property that is the subject of the application must be noticed in the same manner that notice is provided to parties of record..

2. You may view the case file that was presented to the Land Use Hearing Officer in Planning and Growth Management Department, Records Room, 20th floor County Center. You may obtain the following information from the case file:

- The list of persons who were notified of the hearing before the Land Use Hearing Officer.
- Any persons who submitted documentary evidence to the master file.
- In the case of an appeal by the opposition, the owner and applicant information may be found on the application form.

3. You may view the evidence file from the Land Use Hearing Officer's hearing at the Clerk of the Circuit Court/BOCC Recording Secretary's Office, 12th floor, County Center. You may obtain the following information from the Clerk's file:

- The list of persons who signed in to speak at the Land Use Hearing Officer's hearing.
- Any persons who submitted documentary evidence at the hearing.

4. The following documents must be delivered to the office of Citizen Boards Support, 24th floor, County Center, 601 E. Kennedy Blvd., Tampa, Florida 33602, or mailed to Citizen Boards Support, 24th Floor County Center, P.O. Box 1110, Tampa, Florida, 33601, no later than **7 calendar days prior** to the Land Use Appeals Board hearing date:

- A copy of the notice of hearing letter,
- a complete list of all parties of record,
- the stamped Certificate of Mailing, and

- the completed Affidavit of Service (enclosed).

All requests for continuances must follow the procedures outlined in LDC 10.05.02.E. If the continuance request is made after the Notices of Hearing letters have been sent out, a Notice of Continuance must be mailed to all parties of record (sample included).

REMEMBER: The appeal is based on the Record that was presented to the Land Use Hearing Officer. No new evidence or testimony may be submitted to the appeals board.

If you have any questions concerning the Land Use Appeals Board or the appeal procedures, please contact Citizen Board Support at (813) 272-7181.

Sec. 9.03.02. - Land Use Appeals Board

A. Establishment and Purpose

A Land Use Appeals Board is hereby established. Its purpose shall be to hear appeals from the Land Use Hearing Officer as provided for in this Code. See 10.05.02 of this Code.

B. Special Membership Requirements

1. Membership shall include the following, with no more than two persons being appointed from any one category. Initial appointments shall be in accordance with 9.03.01 of this Code.

- a. Attorney with at least five years of experience shall be an attorney practicing in Hillsborough County who shall have been admitted to The Florida Bar for not less than five years;
- b. Landscape Architect or Architect, registered to practice in the State of Florida;
- c. Business owner or operator in unincorporated Hillsborough County;
- d. Professional Planner with not less than three years of experience in land use planning or zoning in Hillsborough County;
- e. Civil or Environmental Engineer registered to practice in Florida;
- f. Member of a civic or neighborhood organization in unincorporated Hillsborough County;
- g. Developer active in development in Hillsborough County or a duly licensed general contractor (Class A) active in business in Hillsborough County.

2. The Board of County Commissioners may appoint up to two alternate members to the Land Use Appeals Board to serve in the absence of a Land Use Appeals Board member. The alternates shall meet one of the qualifications listed in 9.03.02.B.1.

(Ord. No. 98-43, § 2, 7-17-98; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 04-27, § 2, 6-10-04; Ord. No. 05-10, § 2, 6-16-05, eff. 10-1-05; Ord. No. 05-22, § 2, 11-17-05)

Sec. 10.03.06. - Party of Record

A. Defined. A Party of Record is:

1. A person who was present at the hearing before the Land Use Hearing Officer and presented either oral testimony or documentary evidence.
2. A person who was notified of the hearing before the Land Use Hearing Officer by proof of mailing pursuant to the terms of this Code.
3. A person who submitted documentary evidence to the master file two business days prior to the Land Use Hearing Officer hearing or by proxy during the Land Use Hearing Officer hearing.

B. Relationship to Law of Standing. The description of Party of Record contained herein is in no way intended either to broaden or restrict that group of individuals recognized by law to have standing to contest a decision of the Board.

C. Staff of the Planning Commission, County departments, and other regulatory agencies shall not be considered a party of Record. However, such staff shall be limited to the record.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 99-25, § 2, 11-18-99)

Sec. 10.05.02. - From Land Use Hearing Officer to Land Use Appeals Board

A. Generally

Except where a different procedure is set forth elsewhere in this Code, and except for appellate decisions rendered pursuant to 10.05.01, any decision of the Land Use Hearing Officer under this Code may be appealed to the Land Use Appeals Board as set forth below and in Section 10.2 of the Development Review Procedures Manual.

B. Standing to Appeal

The following shall have standing to appeal a decision of the Land Use Hearing Officer, or to intervene in an appeal that has been filed pursuant to this section:

1. An applicant who is adversely affected by the Land Use Hearing Officer's decision; or
2. Any person or entity who:
 - a. Was present at the hearing before the Land Use Hearing Officer and presented either oral testimony or documentary evidence; or
 - b. Submitted documentary evidence themselves or by proxy prior to or during Land Use Hearing Officer hearing, and
 - c. Is adversely affected by the Land Use Hearing Officer's decision.

The Land Use Appeals Board shall determine whether a person or entity has standing to appeal or intervene in an appeal at the appeal hearing.

C. Notice of Appeal

1. A Notice of Appeal of a decision shall be filed within 30 calendar days of the date on which the Land Use Hearing Officer rendered the decision in writing. Said Notice of Appeal shall be in accordance with the submittal requirements of appeals as defined in Section 10.1 of the Development Review Procedures Manual.
2. The Notice of Appeal shall be filed with the Administrator and shall set forth the basis for the appeal.

D. Referral to Land Use Appeals Board

1. The Administrator shall schedule the matter before the next regularly scheduled meeting of the Land Use Appeals Board that is at least 20 days from the date the Notice of Appeal was filed.
2. The Appellant must provide a Notice of Hearing to all parties of record as defined in LDC 10.03.06A no later than 20 days prior to the Land Use Appeals Board hearing date by proof of mailing receipt.
3. A copy of the notice of hearing, a list of all parties who were noticed and an executed Certificate of Mailing must be submitted to the administrative office of the Land Use Appeals

Board no later than five calendar days prior to the Land Use Appeals Board hearing date.

E. Continuances

1. One continuance shall be granted to the appellant and/or property owner, whichever requested the continuance, if the continuance request is filed with the administrative office of the Land Use Appeals Board at least 14 calendar days or more before the Land Use Appeals Board hearing date.
2. The appellant and/or property owner shall send the notice of continuance by proof of mailing to all parties of record at least 11 calendar days of the Land Use Appeals Board's hearing and shall submit proof of mailing to the administrative office of the Land Use Appeals Board at least 5 calendar days prior to the hearing date. This notification shall include the new time, date, and location of the meeting.
3. If the criteria for granting a continuance as listed in 10.05.02.E.1 not satisfied, the continuance request shall be considered by the Land Use Appeals Board at its meeting when the petition was scheduled for consideration.
4. At its discretion for unique circumstances, the Land Use Appeals Board may continue a petition at the Land Use Appeals Board's meeting without notification.

F. Conduct of Hearing

1. The hearing shall be limited to the record on appeal, as defined at 10.03.03 H of this Article, and shall consist of oral argument by the Administrator, party appealing the decision, and any intervenor(s), each of whom may be represented by legal counsel.
2. In addition to the record on appeal, the Land Use Hearing Officer and parties to the appeal may freely refer to the following:
 - a. Applicable portions of the Hillsborough County Comprehensive Plan, the Hillsborough County Land Development Code, and any other duly adopted Hillsborough County ordinance, rule or resolution.
 - b. Any state or federal statute, rule, or decision.

G. Authority of Land Use Appeals Board

The Land Use Appeals Board shall review the record on appeal and hear argument from parties who have standing to appeal or intervene in an appeal. The Land Use Appeals Board shall have the authority to either uphold the Land Use Hearing Officer's decision remand the case back to the Land Use Hearing Officer, or overturn the Land Use Hearing Officer's decision pursuant to 10.05.02.G.2.

1. If the Land Use Appeals Board remands a case back to the Land Use Hearing Officer, the Land Use Appeals Board shall specify the reason for the remand and specify the issues for the Land Use Hearing Officer to address.
2. The Land Use Appeals Board may overturn the decision of the Land Use Hearing Officer only if the all following criteria have been met:

- a. The case has been remanded one time by the Land Use Appeals Board to the Land Use Hearing Officer; and
- b. Based upon the record on appeal, if the Land Use Appeals Board finds that one or more of the official findings of fact and the conclusions of law as found in the decision of the Land Use Hearing Officer is unsupported by competent and substantial evidence in the record or if the essential requirements of the law have not been followed; and
- c. A supermajority of five (5) Land Use Appeals Board members vote to overturn the Decision of the Land Use Hearing Officer.

3. If the Land Use Appeals Board overturns the Decision of the Land Use Hearing Officer, the Land Use Appeals Board must make findings of fact and conclusions of law. The Land Use Appeals Board may accept, reject or modify the Land Use Hearing Officer's findings of fact and conclusions of law in making the final decision. In addition, the Land Use Appeals Board may impose reasonable conditions on the permit request, if granting the request.

H. Finality of Decision

The decision of the Land Use Appeals Board shall be rendered at the conclusion of the hearing but shall be reduced to writing. Final decisions of the Land Use Appeals Board may be challenged by any persons with standing under state law, in whatever way authorized by state law.

(Ord. No. 97-18, § 2, 12-18-97; Ord. No. 98-43, § 2, 7-17-98; Ord. No. 00-38, § 2, 11-2-00; Ord. No. 01-26, § 2, 9-12-01; Ord. No. 02-13, § 2, 8-1-02; Ord. No. 05-22, § 2, 11-17-05; Ord. No. 06-34, § 2(Exh. A), 11-2-06)

NOTICE OF HEARING

APPEAL NUMBER: _____

PETITION FILE NUMBER: _____

APPELANT: _____

OWNERS: _____

PETITION REQUEST: To appeal the decision of the Land Use Hearing Officer who (approved or denied) a (variance or special use permit) for _____

LOCATION: _____

FOLIO: _____

SIZE OF PROPERTY/ZONING: _____ acres)/_____

DATE OF LAND USE HEARING OFFICER HEARING: _____

YOU ARE HEREBY NOTIFIED that an appeal of the decision of the Land Use Hearing Officer for the above referenced case has been filed pursuant to Hillsborough County Land Development Code 10.05.02. The appeal has been scheduled for a hearing before the Hillsborough County Land Use Appeals Board for **Friday, _____ Day of _____, 20____, at _____**, at the Hillsborough County Center, 601 E. Kennedy Blvd., 2nd Floor, County Commissioner’s Board Room, Tampa, Florida.

As a "party of record" as defined in Land Development Code 10.03.06, you are notified of the filing of this appeal and the setting of the matter before the Land Use Appeals Board. The hearing will be limited to the record on appeal, as defined at 10.03.03 H of the Land Development Code and shall consist of oral argument by the Administrator, party appealing the decision, and any intervenor(s) of record.

For information on this appeal or board procedures, you may contact Citizen Boards Support at (813) 272-7181, P.O. Box 1110, 24th floor, County Center, Tampa, Florida, 33601 or the appellant _____
(name & phone number)

****PARKING NOTICE **:** Parking is available at the Pierce Street Parking Garage across from the County Center. You must enter the garage from the north side of Jackson Street just east of Pierce Street. The cost is 80 cents per half hour.

NOTICE OF CONTINUANCE

APPEAL NUMBER: _____

PETITION FILE NUMBER: _____

APPELANT: _____

OWNERS: _____

PETITION REQUEST: To appeal the decision of the Land Use Hearing Officer who (approved or denied) a (variance or special use permit) for _____

LOCATION: _____

FOLIO: _____

SIZE OF PROPERTY/ZONING: _____ acres)/ _____

DATE OF LAND USE HEARING OFFICER HEARING: _____

YOU ARE HEREBY NOTIFIED that an appeal of the decision of the Land Use Hearing Officer for the above referenced case was filed pursuant to Hillsborough County Land Development Code 10.05.02 for a hearing before the Hillsborough County Land Use Appeals Board. The appeal was continued to **Friday, on the ____ day of _____, 20____, at 9:00 a.m.**, at the Hillsborough County Center, 601 E. Kennedy Blvd., 2nd Floor Board of County Commissioners' Boardroom, Tampa, Florida.

As a "party of record" as defined in Land Development Code 10.03.06, you are notified of the filing of this appeal and the setting of the matter before the Land Use Appeals Board. The hearing will be limited to the record on appeal, as defined at 10.03.03 H of the Land Development Code and shall consist of oral argument by the Administrator, party appealing the decision, and any intervenor(s) of record.

For information on this appeal or board procedures, you may contact Citizen Boards Support at (813) 272-7181, P.O. Box 1110, 24th floor County Center, Tampa, Florida, 33601, or the appellant

(name & phone number)

****PARKING NOTICE **:** Parking is available at the Pierce Street Parking Garage across from the County Center. You must enter the garage from the north side of Jackson Street just east of Pierce Street. The cost is 80 cents per half hour.

NOTICE AFFIDAVIT

STATE OF FLORIDA
COUNTY OF _____

I hereby state that I am the appellant or the agent for the appellant in the matter of the appeal of the decision of the Land Use Hearing Officer to the Land Use Appeals Board, for Appeal #_____.

I further state that I have notified all parties of record as defined in LDC 10.03.06.A., for the above reference appeal by Proof-of-Mailing as shown by the attached Certificate of Mailing and notice letter as proof of such notification.

TYPE OR PRINT LEGIBLY
NAME OF OWNER/AGENT OF OWNER

SIGNATURE OF OWNER/AGENT

DATE SIGNED

PERSONALLY APPEARED before me, the undersigned authority_____, who is personally known to me or provided _____ as identification, and acknowledged that he/she did execute the foregoing Affidavit of Notice and did not take an oath.

SWORN AND SUBSCRIBED before me this ___ day of _____,20___.

Notary Public, State of Florida
My Commission Expires:

Name & Address of Sender:

Check type of mail or service:

- Certified
- COD
- Delivery Confirmation
- Express Mail
- Insured
- Recorded Delivery (International)
- Registered
- Return Receipt for Merchandise
- Signature Confirmation

Affix Stamp Here (If issued as a certificate of mailing, Or for additional copies of this bill) POSTMARK AND DATE OF RECEIPT.

CERTIFICATE OF MAILING

Line	ARTICLE #	Addressee: Name, Street, City, State, & Zip Code	Postage	Fee	Handling Charge	Actual Value (if Reg.)	Insured Value	Due Sender if COD	RR Fee	DC Fee	SC Fee	SH Fee	SD Fee	RD Fee	Remark
1															
2															
3															
4															
5															
6															
7															
8															
9															
10		Total Number of Pieces Received at Post Office													
Total # of Pieces Listed By Sender															

CERTIFICATE OF MAILING
APPEAL (appeal number)

Name & Address of Appellant

1. «First_Name» «Last_Name» of Parties of Record
«Address_Line_1»
«City», «State» «ZIP_Code»
- 2.

Hearing date: _____