

COMPREHENSIVE PLANS:  
HANDLING A HEARING:  
A PRACTICAL APPROACH TO NEGOTIATING THE ARRAY OF HEARINGS  
REQUIRED IN ORDER TO AMEND A LOCAL COMPREHENSIVE PLAN

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1. Before Hearing
  - A. Ensure there is no statutory impediment to the adoption of the proposed plan amendment
    - a. Is the plan amendment subject to the twice per year limitation on the adoption of plan amendments or one of the exceptions to that statutory limitation? (There are currently 34 statutory exceptions to the twice per year limitation. The exceptions are listed in Rule 9J-11.006, F.A.C., although the current list is not complete and is in the process of being updated by the Department of Community Affairs.)
    - b. Is the local government prohibited from adopting further amendments because it has not complied with a statutory requirement, such as failing to adopt timely its Evaluation and Appraisal Report (“EAR”) or its EAR based amendments? (The eight tasks which if not completed timely preclude further plan amendments are listed in Rule 9J-11.009(8), F.A.C.)
  - B. Identify the issues which are likely to be raised by reviewing agencies or opponents
  - C. Select the consultants you will need at hearing. You will generally need:
    - a. Land planner
    - b. Engineer
    - c. Traffic consultant
    - d. Project architect depending on the project
  - D. Meet with neighborhood groups or others who might oppose the amendment and the review agencies which are most likely to raise concerns in order to resolve as many issues as possible

2. Hearings

- A. If the proposed amendment is a large scale amendment to the future land use map or a text amendment to the comprehensive plan, the amendment will be heard once by the local planning agency and twice by the local government, first at a transmittal hearing and then at an adoption hearing.
- B. If the proposed amendment is a small scale plan amendment, the amendment will be heard once by the local planning agency and only once by the local government.
- C. All hearings related to comprehensive plan amendments are legislative – not quasi-judicial (*Board of County Commissioners of Brevard County v. Snyder*, 627 So.2d 469 (Fla. 1993); *Martin County v. Yusem*, 690 So.2d 1288 (Fla. 1997); *Coastal Development of North Florida, Inc. v. City of Jacksonville Beach*, 788 So.2d 204 (Fla. 2001))
  - a. There is no need to create a record for appeal purposes – any appeal is de novo
  - b. There is no need for a court reporter – although some petitioners have a court report present if the amendment is very controversial.
    - i. May temper opponents’ comments
    - ii. Statements made by opponents could be used for impeachment purposes if the testimony at subsequent hearing differs
- D. You generally need to present more information at the hearing before the local planning agency and at the transmittal hearing than at the adoption hearing. By the adoption hearing, the local government should be familiar with the amendment and you may only need only to respond to any objections raised by the Department of Community Affairs or to questions.

5. At Hearing

- A. Explain the proposed amendment. If the proposed amendment is a future land use map change:
  - a. explain the existing and proposed land use and the project for which the change is being requested.
  - b. address compatibility with adjacent uses; buffers and setbacks are an important part of any compatibility discussion.

- c. address the impact on:
  - i. Parks
  - ii. Roads
  - iii. Schools if the proposed project is a residential development
  - iv. Water – water supply/ consumptive use permit
  - v. Water facilities
  - vi. Sewer facilities
  - vii. Affordable housing
- d. Wetlands and environmental issues.
- e. It is helpful to compare the impacts from the current and the proposed land use. If the impacts from the proposed land use are equal to or less than the impacts of the current land use, there no additional impact on facilities.
- f. The Department of Community Affairs requires all impact analyses to be based on the maximum permissible density/intensity unless the comprehensive plan will limit the density/intensity.

6. After Hearing

It is important to verify that the documents you want transmitted to the Department of Community Affairs are included in the transmittal and adoption packages and to verify the Department of Community Affairs' review schedule.

7. Alternative State Review Pilot Program

- A. HB 7203 (Chapter 2007-2004, Laws of Florida; Section 163.32465, Florida Statutes.) establishes an alternate state review pilot program for six local governments:
  - a. Jacksonville
  - b. Miami
  - c. Tampa
  - d. Hialeah

- e. Broward County and the municipalities in Broward County unless a municipality, by super majority vote, elects not to participate in the program
  - f. Pinellas County and the municipalities in Pinellas County unless a municipality, by super majority vote, elects not to participate in the program
- B. Most plan amendments in those jurisdictions will be subject to an expedited review process. (Certain plan amendments are exempted from the alternative review process. For example, EAR based amendments and amendments which implement new statutory requirements such as school concurrency are not eligible for expedited review.)
- C. The alternate state review program affords review agencies and the Department of Community Affairs less time to review and comment on a proposed amendment. One likely impact of the program is that preliminary meetings with review agencies will become more important as there will be less time in the review process to evaluate and overcome agency objections.
- D. The alternate state review pilot program has no impact on:
  - a. small scale amendments
  - b. the frequency of plan amendments which is still limited to twice per year