

FILE 2814 — October 16, 2024

## **LOBBYING RESTRICTIONS**

### **FORMER MEMBER OF THE COLLIER COUNTY PLANNING COMMISSION**

To: *Robert Klucik, Esq. (Ave Maria)*

#### **SUMMARY:**

A person who currently is an elected special district officer in a special district with ad valorem taxing authority and who formerly was a commissioner on a county planning commission would not be prohibited from representing persons and entities for compensation on land use matters before his former agency under Section 112.313(14), Florida Statutes. Under the facts presented, the Post-Office Lobbying Ban in Article II, Section 8(f)(3), Florida Constitution, would not apply to prohibit him from lobbying the county planning commission. Also, under the facts presented, the In-Office Lobbying Ban in Article II, Section 8(f)(2), Florida Constitution, would not prohibit him from representing clients before the county planning commission and the Board of County Commissioners on land use matters as that would be considered representation in administrative actions, not lobbying. Referenced is CEO 23-6.

#### **QUESTION:**

Would an attorney who is currently an elected special district officer in a special district with ad valorem taxing authority and who is a former commissioner of a County Planning Commission be prohibited from representing clients in land use

matters before the Planning Commission and/or the Board of County Commissioners?

This question is answered in the negative.

You were elected to serve on the Board of Supervisors of the Ave Maria Stewardship Community District and your term of office expires in 2026.<sup>1</sup> You are one of two Board members that were elected by qualified electors in the District. The remaining three Board members were elected by the landowners on a one-acre, one-vote basis. Under Section 190.006(3), Florida Statutes, election by qualified electors is a condition precedent to the District exercising its authority to impose ad valorem taxes.

You also were appointed to serve as a Commissioner on the Collier County Planning Commission ("Planning Commission"), which is an advisory board that makes recommendations to the Collier County Board of County Commissioners. Your last day on the Planning Commission was September 30, 2024.

You seek to advise clients on land use matters that might come before the Planning Commission and/or the Board of County Commissioners and to represent them in those matters before the Planning Commission and/or the Board of County Commissioners. You anticipate giving legal advice to clients regarding the planning rules and regarding how to obtain the necessary county approval to achieve their goals with respect to land use, helping clients prepare and submit the necessary documents to the county, and possibly representing the clients before the Planning Commission and the Board of County Commissioners to help them obtain approval for their land use requests.

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<sup>1</sup> The Ave Maria Stewardship Community District is located in Eastern Collier County.

In a phone conversation, you mentioned that your representation would include such things as trying to obtain an exception or a deviation for a client. You also indicated in your submissions that the County has adopted a Resolution establishing the procedures and provisions in Section 286.0115(2), Florida Statutes, for quasi-judicial proceedings on local government land use matters.

With this background, you ask whether Florida law would prohibit you from advising clients on land use matters that might come before the Planning Commission and/or the Board of County Commissioners and from representing them in those matters before those entities.

Relevant to your inquiry, there are three ethical standards containing restrictions on compensated representation and lobbying. There is a two-year statutory ban against former local officers representing persons or entities for compensation before their former government body or agency (i.e., Section 112.313(14), Florida Statutes). There are also two bans against lobbying found in Article II, Section 8(f), Florida Constitution. The first ban, found in Article II, Section 8(f)(2), Florida Constitution, is a ban against lobbying for compensation before "the federal government, the legislature, any state government body or agency, or any political subdivision of this state" while in office. The second lobbying ban, found in Article II, Section 8(f)(3), Florida Constitution, is a six-year ban, which begins at the time one leaves one's public position, against lobbying for compensation before certain specified entities. We refer to these as the "In-Office" Lobbying Ban and the "Post-Office" Lobbying Ban, respectively.

Regarding the two-year representation ban for former local officers, Section 112.313(14), Florida Statutes, provides:

LOBBYING BY FORMER LOCAL OFFICERS;  
PROHIBITION.—A person who has been **elected** to any county, municipal, special district, or school district office or appointed superintendent of a school district may not personally represent another person or entity for compensation before the government

body or agency of which the person was an officer for a period of 2 years after vacating that office. For purposes of this subsection:

(a) The “government body or agency” of a member of a board of county commissioners consists of the commission, the chief administrative officer or employee of the county, and their immediate support staff.

(b) The “government body or agency” of any other county elected officer is the office or department headed by that officer, including all subordinate employees.

(c) The “government body or agency” of an elected municipal officer consists of the governing body of the municipality, the chief administrative officer or employee of the municipality, and their immediate support staff.

(d) The “government body or agency” of an elected special district officer is the special district.

(e) The “government body or agency” of an elected school district officer is the school district.

(Emphasis added.)

This provision prohibits "former local officers" of certain specified elective offices—including a member of a board of county commissioners, any other county elected officer, and an elected special district officer—from representing another person or entity, including a client or employer, before their former government body or agency.

Until recently, you held two offices. You formerly were an appointed commissioner on the Collier County Planning Commission and you are currently an elected Board Member of the Ave Maria Stewardship Community District. Because you are not the former member of one of the specified elective offices, this prohibition does not apply to you.

Next, we shall examine whether the In-Office Lobbying Ban, found in Article II, Section 8(f)(2), Florida Constitution, would be applicable to your situation. That is, we will look at whether the ban against lobbying for compensation while in office (i.e., while in your position as a member of the Board of Supervisors of the Ave Maria Stewardship Community District) would

prohibit your representing clients with land use matters coming before the Planning Commission and/or the Board of County Commissioners. The In-Office Lobbying Ban provides:

A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement before the federal government, the legislature, any state government body or agency, or any political subdivision of this state, during his or her term of office.

A "public officer," for purposes of the lobbying bans found in Article II, Section 8(f) of the Florida Constitution, is defined as:

. . . a statewide elected officer, a member of the legislature, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, **an elected special district officer in a special district with ad valorem taxing authority**, or a person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government.

See Art. II, § 8(f)(1), Fla. Const. (emphasis added).

The In-Office Lobbying Ban is implemented by Section 112.3121, Florida Statutes, defining many of the terms used in the constitutional prohibition. Section 112.3121(3), Florida Statutes, defines an "Elected special district officer in a special district with ad valorem taxing authority" as:

. . . an officer elected by the qualified electors of a special district, or appointed to fill an unexpired term of such officer, and does not include an officer elected by landowners when an election by qualified electors is a condition precedent to the exercise of the ad valorem taxing authority under s. 190.006(3). If such condition precedent does not apply, the term "elected special district officer in a special district with ad valorem taxing authority" means an officer elected by any method prescribed by law for a special district with ad valorem taxing authority.

It appears you are a public officer subject to the restrictions of the In-Office Lobbying Ban because you are an officer elected by the qualified electors of the Ave Maria Stewardship Community District.

"Lobby" is defined in Section 112.3121(11)(a)3., Florida Statutes, as:

. . . to influence or attempt to influence an action or decision through oral, written, or electronic communication and, with respect to:

\* \* \*

3. A political subdivision, is limited to influencing legislative actions or other discretionary decisions, but does not include **administrative actions** . . . .

(Emphasis added.)

Section 112.3121(1), Florida Statutes, further defines "administrative action," in relevant part, as:

. . . for a political subdivision not subject to chapter 120, any action or a decision on a license, permit, waiver of regulation, development order or permit, or development agreement; any quasi-judicial proceeding on local government land use matters regulated by s. 286.0115(2) . . . .

Section 286.0115(2), Florida Statutes, states that a county or a municipality may adopt an ordinance or resolution establishing the procedures and provisions for quasi-judicial proceedings on local government land use matters. See § 286.0115(2)(a), Fla. Stat. You indicated Collier County has adopted a Resolution that incorporates the procedures for quasi-judicial proceedings on local government land use matters set forth in Section 286.0115(2).<sup>2</sup> Thus, the proceedings before the County Planning Commission and the Board of County Commissioners would constitute "administrative action" and your representation of clients on land use matters in those venues is not subject to the lobbying ban. You also indicate that you would be assisting clients to obtain exceptions or deviations related to land use. It appears that this would be consistent with seeking "[an] action or a decision on a license, permit, waiver of regulation, development order or

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<sup>2</sup> Resolution 98-167: A Resolution Establishing Procedures for Presentations and Public Comment Before the Board of County Commissioners and the Collier County Planning Commission.

permit, or development agreement" on behalf of your clients. These actions are also considered "administrative actions" and your representation of clients in conjunction to them is not subject to the lobbying ban.<sup>3</sup>

Lastly, let us look at the six-year Post-Office Lobbying Ban, found in Article II, Section 8(f)(3) of the Florida Constitution, which provides:

A public officer shall not lobby for compensation on issues of policy, appropriations, or procurement for a period of six years after vacation of public position, as follows:

a. A statewide elected officer or member of the legislature shall not lobby the legislature or any state government body or agency.

b. A person serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government shall not lobby the legislature, the governor, the executive office of the governor, members of the cabinet, a department that is headed by a member of the cabinet, or his or her former department.

c. A county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority shall not lobby his or her former agency or governing body.

This provision prohibits public officers, specifically, statewide elected officers, members of the legislature, persons serving as a secretary, an executive director, or other agency head of a department of the executive branch of state government, county commissioners, certain county officers, school board members, superintendents of schools, elected municipal officers, and elected special district officers in special districts with ad valorem taxing authority from lobbying their

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<sup>3</sup> It is important to note a recent court ruling. In CEO 23-6, we supplied guidance premised on the unenforceability of the In-Office Lobbying Ban, noting that "a federal district court recently issued a permanent injunction against enforcing the prohibition in Article II, Section 8(f)(2), Florida Constitution, against all public officers, finding it unconstitutional." However, the 11<sup>th</sup> Circuit Court of Appeals has subsequently stayed that injunction pending an appeal of the District Court's ruling. Garcia et al. v. Executive Dir., Fla. Comm'n on Ethics, No. 23-10872, ECF No. 33 (11<sup>th</sup> Cir. June 5, 2023). Therefore, currently, the prohibition is enforceable.

former agencies or governing bodies for compensation on issues of policy, appropriations, and procurement for a period of six years after they vacate their public positions. Given that this is a post-office holding restriction, we must analyze it relative to the office you vacated, not the office you currently hold.

The position you left, that of a Commissioner on a County Planning Commission, was plainly not that of "a statewide elected officer or member of the legislature," "a secretary, an executive director, or other agency head of a department of the executive branch of state government," or "a school board member, a superintendent of schools, [or] an elected municipal officer." Your position also was not that of "a county officer pursuant to Article VIII or county charter," because it is not listed among the positions that constitute county offices in Article VIII, Section 1(d), and because Collier County is not a chartered county. Nor were you a "county commissioner," because you served on a planning commission with responsibility to advise the county commission, not on the county commission itself. Finally, you were not "an elected special district officer in a special district with ad valorem taxing authority," because you were appointed, not elected, to the County Planning Commission. For all these reasons, the Post-Office Lobbying Ban does not presently restrict you.

In sum, the two-year representation ban found in Section 112.313(14), Florida Statutes, does not apply to you because the position you left, that of a Commissioner on the Planning Commission, is not a position to which the statute is applicable.

You would be subject to the In-Office Lobbying Ban, by virtue of your being an elected special district officer in a special district with ad valorem taxing authority, but the definition of "lobbying," as it applies to the context of political subdivisions, such as counties, does not include administrative actions. What you have described doing, in representing your clients in land use



matters before the Planning Commission and the Board of County Commissioners, would constitute administrative actions. Therefore, you would not be considered to be lobbying if you engaged in the proposed representations and would not be in violation of the In-Office Lobbying Ban.

Finally, a Commissioner on the Planning Commission is not included in the list of former positions for which the six-year Post-Office Lobbying Ban found in Article II, Section 8(f)(3), Florida Constitution, is applicable. Therefore, the six-year Post-Office Lobbying Ban is not applicable to you under the facts presented.

If and when you eventually leave your office with the Board of Ave Maria Stewardship Community District, however, please contact us to discuss the applicability of the In-Office Lobbying and Post-Office Lobbying Bans.

Your question is answered accordingly.

LMF/sjz/ks

cc: Robert Klucik

AUG 30 2024

RECEIVED

Robert Klucik  
5078 Pope John Paul II Blvd #106  
Ave Maria, FL 34142

August 26, 2024

Kerrie Stillman, Executive Director  
The Florida Commission on Ethics  
P. O. Drawer 15709  
Tallahassee, FL 32317-5709  
(850) 488-7864

Dear Ms. Stillman:

I am seeking a public official seeking an Advisory Opinion from the Florida Commission on Ethics. These are the facts:

1. The 2024 GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees published by the Florida Commission on Ethics states:
  - a. For a period of six years after vacation of public position occurring on or after December 31, 2022, a county commissioner, a county officer pursuant to Article VIII or county charter, a school board member, a superintendent of schools, an elected municipal officer, or an elected special district officer in a special district with ad valorem taxing authority shall not lobby for compensation on issues of policy, appropriations, or procurement before his or her former agency or governing body. [Art. II Sec 8(f)(3)c., Fla. Const. and Sec. 112.3121, Fla. Stat.
2. Currently I serve in two different capacities as a public official:
  - a. I serve on the board of supervisors of the Ave Maria Stewardship Community District and was elected to that position by the registered voters (electors) within the district. My current term of office does not expire until 2026.
  - b. September 30, 2024, will be my last day as a Collier County Planning Commissioner, an unpaid volunteer position I was appointed to by the Board of County Commissioners. The Planning Commission is an advisory board and has no authority beyond making recommendations to the Board of County Commissioners. As of October 1, 2024, I will no longer serve on the Collier County Planning Commission.
3. I am a member in good standing of the Florida Bar and am a practicing attorney.

As of October 1, 2024, does Florida law prohibit me from being engaged by clients to assist them with land use matters that will come before the Collier County Planning Commission and/or the Board of County Commissioners, to include representing clients before these bodies? I can be reached at 239.898.4052 or [RLK@AveMariaLawyer.com](mailto:RLK@AveMariaLawyer.com).

Sincerely,

Robert Klucik

## Heyward, Katharine

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**From:** Steverson, Kathryn  
**Sent:** Monday, September 9, 2024 4:59 PM  
**To:** Heyward, Katharine  
**Subject:** FW: Commission on Ethics Opinion Request

Kathryn Steverson  
*Assistant to the Executive Director*

*Florida Commission on Ethics  
P.O. Drawer 15709  
Tallahassee, FL 32317-5709  
(850) 488-7864  
(850) 488-3077 Fax  
[www.ethics.state.fl.us](http://www.ethics.state.fl.us)*

**Physical address:**  
325 John Knox Road  
Building E, Suite 200  
Tallahassee, FL 32303

**From:** Robert Klucik <RLK@avemarialawyer.com>  
**Sent:** Thursday, September 5, 2024 12:45 PM  
**To:** Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>  
**Cc:** Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>  
**Subject:** Re: Commission on Ethics Opinion Request

Based on our phone discussion just now, I consent to processing this as a formal opinion request.

Fides et Ratio

Robb Klucik  
239.898.4052

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**From:** Zuilkowski, Steven <ZUILKOWSKI.STEVEN@leg.state.fl.us>  
**Sent:** Thursday, September 5, 2024 11:24:09 AM  
**To:** Robert Klucik <RLK@avemarialawyer.com>  
**Cc:** Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>  
**Subject:** RE: Commission on Ethics Opinion Request

It appears our phones are down, for some reason. May I call you this afternoon, assuming they're operational by then?

**Steven J. Zuilkowski**  
*Deputy Executive Director & General Counsel*  
Florida Commission on Ethics

P.O. Drawer 15709  
Tallahassee, FL 32317-5709  
(850) 488-7864  
(850) 488-3077 (Fax)  
[ethics.state.fl.us](http://ethics.state.fl.us)

Physical address:  
325 John Knox Road  
Building E, Suite 200  
Tallahassee, FL 32303

**From:** Robert Klucik <[RLK@avemarialawyer.com](mailto:RLK@avemarialawyer.com)>  
**Sent:** Thursday, September 5, 2024 11:20 AM  
**To:** Zuilkowski, Steven <[ZUILKOWSKI.STEVEN@leg.state.fl.us](mailto:ZUILKOWSKI.STEVEN@leg.state.fl.us)>  
**Cc:** Steverson, Kathryn <[STEVERSON.KATHRYN@leg.state.fl.us](mailto:STEVERSON.KATHRYN@leg.state.fl.us)>  
**Subject:** Re: Commission on Ethics Opinion Request

I have some questions. Your phone number is out of order. Please call me.

Fides et Ratio

Robb Klucik  
239.898.4052

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**From:** Zuilkowski, Steven <[ZUILKOWSKI.STEVEN@leg.state.fl.us](mailto:ZUILKOWSKI.STEVEN@leg.state.fl.us)>  
**Sent:** Thursday, September 5, 2024 11:14:29 AM  
**To:** Robert Klucik <[RLK@avemarialawyer.com](mailto:RLK@avemarialawyer.com)>  
**Cc:** Steverson, Kathryn <[STEVERSON.KATHRYN@leg.state.fl.us](mailto:STEVERSON.KATHRYN@leg.state.fl.us)>  
**Subject:** Commission on Ethics Opinion Request

Mr. Klucik:

I am in receipt of your letter requesting an advisory opinion. After reviewing the facts and the inquiry, I believe this matter should be addressed as a formal opinion issued by the Commission on Ethics. The next opportunity for the Commission to consider this opinion request would be at its October 25, 2024 meeting. (The agenda for the September 13 meeting is already set.) Assuming you consent to our processing your inquiry as a formal opinion, it will be assigned to a staff attorney for review and that staff attorney may reach out to you with additional questions about your facts. A draft opinion will be created and the Commission will consider that draft at its October 25 meeting. Do you consent to us processing this as a formal opinion request?

Thank you,

**Steven J. Zuilkowski**  
*Deputy Executive Director & General Counsel*  
Florida Commission on Ethics  
P.O. Drawer 15709  
Tallahassee, FL 32317-5709  
(850) 488-7864  
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Physical address:  
325 John Knox Road  
Building E, Suite 200  
Tallahassee, FL 32303

## Heyward, Katharine

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**From:** Robert Klucik <RLK@avemarialawyer.com>  
**Sent:** Wednesday, September 11, 2024 11:10 AM  
**To:** Heyward, Katharine  
**Cc:** Steverson, Kathryn  
**Subject:** RE: Your formal opinion request  
**Attachments:** Resolution 1998-167.pdf; CCPC Powers & Duties.docx

Thank you.  
My replies are below.

Robb Klucik  
239.898.4052

**From:** Heyward, Katharine <HEYWARD.KATHARINE@leg.state.fl.us>  
**Sent:** Monday, September 9, 2024 4:46 PM  
**To:** Robert Klucik <RLK@avemarialawyer.com>  
**Cc:** Steverson, Kathryn <STEVERSON.KATHRYN@leg.state.fl.us>  
**Subject:** Your formal opinion request

Mr. Klucik,

I have been assigned your request for a formal opinion. I have a few additional questions, the answers to which will aid me in the processing of your inquiry.

1. Please describe what your representation of clients before the Planning Board will entail.  
**\*\*\* Giving legal advice to clients regarding the planning rules and how to obtain any county approval needed, helping to prepare and submit necessary documents to the county, and possibly representing the clients before the county to obtain approval.**
2. To the best of your knowledge, will the representation involve seeking, on behalf of your clients, "any action or a decision on a license, permit, waiver of regulation, development order or permit, or development agreement"?  
**\*\*\* It would involve giving legal advice to clients regarding what they seek from the county, and possibly representing the clients before the county to obtain approval of what is sought.**
3. Where can I find a copy of the ordinance or resolution establishing the quasi-judicial procedures of the Planning Board?  
**\*\*\* Two documents are attached.**

Thank you for promptly responding to these questions. I may have more questions in the future, but this will be enough to allow me to start working on your ethics inquiry.

Sincerely,

Kathy Heyward

**Katharine B. Heyward**  
*Attorney*  
Florida Commission on Ethics

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RESOLUTION 98- 167

## A RESOLUTION ESTABLISHING PROCEDURES FOR PRESENTATIONS AND PUBLIC COMMENT BEFORE THE BOARD OF COUNTY COMMISSIONERS AND THE COLLIER COUNTY PLANNING COMMISSION.

WHEREAS, the Collier County Board of Commissioners (Board), as the duly elected governing body for Collier County, holds regularly scheduled public hearings to discuss, review and act upon items of concern to and affecting the residents of Collier County; and

WHEREAS, the Collier County Planning Commission (CCPC), serving as the local planning agency and the land development regulation commission as required by F.S. §§ 163.3174 and 163.3194, holds regularly scheduled public hearings to discuss, review, act upon and make recommendations to the Board relative to items of concern to and affecting the residents of Collier County; and

WHEREAS, included in these items may be advertised public hearings of a quasi-judicial or legislative nature; and

WHEREAS, the public may wish to comment on these items scheduled for consideration before the Board or the CCPC; and

WHEREAS, in order to maintain, equity, decorum and order at these regularly scheduled public hearings, it is necessary to establish standard procedures for presentations and public comment before the Board and the CCPC; and

WHEREAS, the Board has prepared these rules in an attempt to encourage public participation during advertised public hearings, including quasi-judicial hearings, in a manner consistent with the requirements of law.

NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA that:

The Board of County Commissioners declares that the procedures set forth, attached hereto, and incorporated by reference herein as Exhibit A, applicable to the



Board and the Collier County Planning Commission as stated in said Exhibit, are fair and reasonable, and are hereby adopted.

BE IT FURTHER RESOLVED that this Resolution relating to procedures for Board and CCPC presentations and public comment be recorded in the minutes of this Board.

This Resolution adopted after motion, second and majority vote favoring same.

Done this 19 day of May, 1998.

ATTEST  
Dwight E. Brock, Clerk

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

*[Signature]*  
*[Signature]*  
Barbara B. Berry, Chairman

Attest as to Chairman's signature only.  
Approved as to form and legal sufficiency:

*[Signature]*  
David C. Weigel, County Attorney

**Exhibit "A"**  
**Procedures for Presentations before the Collier County Board of Commissioners and as Applicable to the Collier County Planning Commission**

- A. **Public Comment on General Topics:** Members of the public may register to speak on general topics under the Public Comment portion of the Board of County Commissioner's (Board) agenda. The number of speakers permitted to register under public comment on any given agenda shall be limited to a maximum of five, unless the Chairman recognizes additional speakers.
- I. **Speaker Registration:** Individuals wishing to speak to the Board under public comment at any regularly scheduled meeting of the Board of County Commissioners shall register to speak in writing on the form provided by the County prior to the public comment portion of the agenda being called by the Chairman.
  - II. **Time Limits:**
    - a) **Public Comment:**
      - I. Maximum 5 minutes per speaker.
- B. **Public Petitions:** Public Petitions are limited to a single speaker. In general, the Board will not take action on public petition items on the day the petition is presented, but may direct staff to take action, or bring back the item to the Board at a future date for consideration. The County Administrator may defer scheduling a public petition for a reasonable period of time in order to allow sufficient time for staff to review the content and thus prepare for questions from the Board.
- I. **Registration:** Individuals wishing to make a public petition to the Board of County Commissioners shall present such a request in writing to the County Administrator a minimum of 13 days prior to the Board meeting date on which the public petition is requested to be heard. The written request shall include the name(s) and address(es) of all petitioners, including a primary contact name, address and telephone number, and shall state the nature of the petition, including any exhibits and/or back up material which may be pertinent to the petition.
  - II. **Time Limits:** Maximum 10 minutes per speaker.
- C. **Advertised Public Hearings:** For procedural purposes, advertised public hearings fall into two categories: those which are quasi-judicial in nature; and other types of advertised public hearings, including those which are legislative in nature.
- I. **Quasi-Judicial Public Hearings:**

- a) Purpose and Intent: The Board has prepared these rules in an attempt to encourage public participation during quasi-judicial hearings in a manner consistent with the requirements of law. As part of that effort and within the confines of the law, the Board intends its hearings to be informal while recognizing the need for certain structure to maintain orderly hearings. Notwithstanding the procedures established by resolution, the Board may modify these procedures to effectuate the effective presentation of evidence.
- b) Applicability of these Procedures:
- (1) Quasi-Judicial Proceedings. These procedures apply to all quasi-judicial proceedings heard by the Board and the CCPC regardless of the capacity in which the Board is sitting. Quasi-Judicial actions concern the implementation of policy, which has already been set, and affording the Board, and in some instances the CCPC, limited discretion in deciding whether to approve or deny a land use permit. These include land use actions which have an impact on a limited number of persons or property owners on identifiable parties and interests, where the decision is contingent on a fact or facts arrived at from distinct alternatives presented at a hearing. Examples of quasi-judicial proceedings include but are not limited to: site specific rezonings (provided they involve policy implementation); development of regional impact hearings; conditional use permits; variances; boat dock extension petitions; and administrative appeals.
  - (2) Legislative Proceedings. Utilization of these procedures by the Board or the CCPC when sitting in a legislative capacity does not change the character of the legislative proceeding nor does it confer any additional rights or remedies upon any person or party.
- c) Pre-Hearing Submittals:
- (1) Application. An applicant (as defined in the Collier County Land Development Code) shall make application as provided in the procedures established for the individual decision being requested.
  - (2) Staff/Agency Recommendation. To the extent that the applicable procedure requires a staff review and written recommendation to be presented to the Board, such written recommendation shall be completed and available for public inspection no later than ten calendar days prior to the hearing before the Board.
  - (3) Written Presentation. No later than one week prior to the scheduled public hearing before the Board, any applicant, proponent, or opponent may submit any written arguments, evidence, explanations, studies, reports, petitions or other documentation to staff for intended consideration by the Board in support of or in opposition to the application. In order to be included in a Board or CCPC Agenda packet, any written arguments, evidence, explanations, studies, reports, petitions or other documentation must be submitted to the appropriate staff no later than three weeks prior to the scheduled hearing before the respective body. All written

submissions, not including pictorial displays (maps, graphs and the like) must be on 8-1/2 x 11-inch paper. No written materials will be accepted by the Board at its hearing unless, at the Board's discretion, acceptance is necessary to decide the issue. Written comments submitted shall be considered and entered into the record of the meeting in accordance with subsection C. I. d)(4) below.

d) Public Hearings before the Board or the CCPC:

(1) General. It is the expectation that the hearing will be informal. All members of the public who address the Board or the CCPC shall utilize the speaker's podium to allow their comments to be recorded. Each speaker shall state his or her name and address for the record. Additionally, speakers shall indicate whether they are speaking on behalf of themselves or others.

(a) Time Limitation Guidelines. It is expected that presentations will be organized and efficiently presented. As a guideline to presentations, in addition to the written comments submitted as part of the preliminary record, it is expected that persons of the following status will prepare their discussions and comments to be completed within the prescribed time limits:

1. Staff shall be responsible for presenting the case on behalf of Collier County and shall limit their presentations to twenty (20) minutes.
2. The applicant shall present his or her entire case in twenty (20) minutes.
3. Expert witnesses shall be limited to ten (10) minutes each.
4. Persons who have been authorized to represent an organization with five (5) or more members or a group of five (5) or more persons should limit their presentation to ten (10) minutes. It is expected that others in the organization or group waive their time.
5. All other persons may speak for a maximum of five (5) minutes each.
6. No speaker may give his or her time to any other speaker. At the discretion of the Chairman, the time allowed for any speaker may be extended.

(b) Registration of Speakers. Persons who desire to speak on an item shall, prior to the item being called to be heard by the Chairman, register with the County Administrator on the forms provided. Five (5) or more persons deemed by the Board to be associated together or otherwise represent a common point of view, as

proponents or opponents on any item may be requested to select a spokesperson.

- (2) Order and Subject of Appearance: To the extent possible, the following shall be the order of the proceeding:
- (a) Preliminary Statement. The Chairman shall read a preliminary statement once at the beginning of the quasi-judicial hearing portion of the agenda outlining the procedure, which shall be followed.
  - (b) Sworn Testimony. The applicant, staff, and all witnesses requesting to speak shall be collectively sworn.
  - (c) Agreement with Staff's Recommendation. If the applicant or agent of the applicant agrees with staff's recommendation and wishes to waive his or her right to present additional evidence, and if no commissioner or anyone from the audience wishes to speak for or against the quasi-judicial agenda item, the Board may vote on the item based upon staff's presentation and the materials in the agenda back-up.
  - (d) Initial Presentation by Staff. County staff shall make the initial presentation to the Board regarding any item under consideration. After completion of the staff presentation, the Board may make inquiries of staff at this time. An applicant or appellant may ask questions of, or seek clarification from, staff by request through the Chairman at the time that party makes its initial presentation to the Board.
  - (e) Applicant's Presentation. After staff presentation, the applicant(s) shall be allowed to make a presentation to the Board based on the time limitation guidelines outlined in the preceding subsection (d) (1) (a), above. During and after the applicants' presentation, the Board shall have an opportunity to comment or ask questions of or seek clarification from the applicant. The Board may also allow staff to comment, ask questions or seek clarification from the applicant(s) at this time.
  - (f) Speakers. After Board and staff inquiry of the applicant, speakers shall be allowed to speak based on the time limitation guidelines outlined in the preceding subsection (d) (1) (a), above. During and after a speaker's presentation, the Board shall have an opportunity to comment or ask questions of or seek clarification from such speaker. The Board may also allow staff to comment, ask questions of or seek clarification from speakers.
  - (g) Staff Response and Summary. The staff shall be allowed an opportunity for response to the presentations by the applicant, proponents and opponents and a summary with any changes in position after consideration of relevant public comment. Proponents

and opponents who believe that the staff response includes errors of fact or law may ask for and may be allowed an opportunity to point out such errors of fact or law.

(h) Applicant's Rebuttal Presentation.

1. Applicant's rebuttal shall be allowed only on items where there is an applicant other than the Board or Board staff. After staff response, the applicant shall be allowed an opportunity for rebuttal. Rebuttal shall be limited to five (5) minutes unless otherwise set by the Board. Rebuttal shall only address previous comments.
2. Staff, who believe that the rebuttal presentation includes an error of fact or law, may ask for and may be allowed an opportunity to point out such error of fact or law.

(i) Board and Staff Inquiry. After all presentations have been made as outlined above, the Board shall have a final opportunity to comment or ask questions. The Board may allow staff to respond to comments previously made at this time.

(j) Limit on Presentations. No person who has made a presentation for or against an item at a given meeting shall be allowed to make additional comments, unless requested to do so by the Board.

(k) Closing of Public Comment. In those matters on which public comment is heard by the Board, the Chairman shall close the public comment portion of the meeting (on that item) upon the conclusion of the last speaker's comments or, in the Board's discretion, if no new relevant information is being presented. No additional public comments shall be allowed, except in specific response to questions by members of the Board.

(3) Miscellaneous Items:

- (a) Continuing Record /Speakers Qualifications. The Clerk to the Board ("Clerk") shall maintain a file with the most recent copies of resumes previously filed with the Clerk by county staff presenters. All other persons testifying on issues requiring educational, occupational and other experience who wish to be qualified as experts shall submit their qualifications in written form for the Board's approval to speak as expert witnesses.
- (b) Organizational or Group Speakers. Prior to presenting his/her case, any person representing an organization or other persons shall indicate, in writing, the organization or group he/she represents and how he/she received authorization to speak on behalf of such organization or group of persons. The Board may make further inquiry into the represented authority of such person if necessary.

- (c) Restrictions on Testimony or Presentation of Evidence. Notwithstanding any provisions herein, any Board member may interrupt any presentation that contains matters which need not be considered in deciding the matter then before the Board for consideration. At any Board proceeding, the Chairman, unless overruled by majority of the Board members present, may restrict or terminate presentations which in the chairman's judgment are frivolous, unduly repetitive or out of order.
- (d) Public Officials. Notwithstanding other provisions hereof, the Board may allow any elected or appointed public official, or representative thereof, to appear and make presentations at any time with regard to matters under consideration.
- (e) Continued Public Hearings. In any matter where it is known that a scheduled public hearing will be continued to a future date certain, the staff report may be abbreviated and public comment may be limited to those persons who state that they believe they can not be available to speak on the date to which the public hearing is being continued. Such persons may make their comments at the current meeting; provided, however, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject. This waiver shall not preclude such persons from making different presentations based on new information or from offering response to other persons' presentation, if otherwise allowable, at any subsequent meeting.

(4) The Record

- (a) Automatically Included in the Record: The following documents shall automatically be included in the record of the hearing before the Board:
- (1) The record from any preliminary hearing, the agenda packet, the staff report, and the transcript of the hearing before the Board;
  - (2) Written comments and documents previously entered into the record at a prior Board meeting on the particular matter.
- (b) Items Which Shall Be Placed in the Record: Any additional documents, exhibits, diagrams, petitions, letters or other materials presented in support of, or in opposition to, an item to be considered by the Board shall be entered into the record, as long as it was received by the Board's Clerk or the applicable Collier County department seven (7) days prior to the date of the hearing.

- (c) Additional Evidence. Except pursuant to subsection C) (3) above, Written Presentation, any additional written or documentary evidence filed within seven (7) days of the date of the hearing shall not become part of the record.
  - (d) Custodian. The Clerk shall be the official custodian of the record.
  - (e) Exhibits. Unless an oversized exhibit is absolutely essential, documentary paper or photographic exhibits should not exceed 24 inches by 36 inches and, if mounted on a backboard, shall be removable therefrom. All documentary evidence should be capable of being folded and filed.
- II. Other Public Hearings: The following rules apply to advertised public hearings other than those which are quasi-judicial in nature, including those advertised public hearings which are legislative in nature.
- a) Pre-Hearing Submittals:
    - (1) Application. An applicant (as defined in the Collier County Land Development Code) shall make application as provided in the procedures established for the individual decision being requested.
    - (2) Staff/Agency Recommendation. To the extent that the applicable procedure requires a staff review and written recommendation to be presented to the Board, that written recommendation shall be completed and available for public inspection no later than ten calendar days prior to the hearing before the Board.
    - (3) Written Presentation. No later than one week prior to the scheduled public hearing before the Board, any applicant, proponent, or opponent may submit, in support of or in opposition to the issue which is the subject of the advertised public hearing, any written arguments, evidence, explanations, studies, reports, petitions or other documentation to staff for intended consideration by the Board. All written submissions, not including pictorial displays (maps, graphs and the like) must be on 8-1/2 x 11-inch paper.
  - b) Public Hearing:
    - (1) General. All members of the public who address the Board shall utilize the speaker's podium to allow their comments to be recorded, and shall identify themselves by name and local addresses, if applicable. Further, any speaker speaking on behalf of an organization or group of individuals (exceeding five) shall indicate such and shall cite the source of such authority whether by request, petition, vote, or otherwise.
      - (a) Time Limitation Guidelines. It is expected that presentations will be organized and efficiently presented. As a guideline to presentations, in addition to the written comments submitted as part of the preliminary record, it is expected that persons in the



following status will prepare their discussions and comments to be completed within the prescribed time limits:

1. Staff shall be responsible for summarizing the item for the Board and shall limit such presentation to a maximum of twenty (20) minutes.
  2. For advertised public hearing items (other than those which are quasi-judicial in nature), where there is an applicant other than the Board of County Commissioners or staff, following the staff summary of the item the applicant will have an opportunity to make a maximum (10) minute presentation.
  3. Persons who have been authorized to represent an organization with five (5) or more members or a group of five (5) or more persons should limit their presentation to ten (10) minutes. It is expected that others in the organization or group waive their time.
  4. All other persons may speak for a maximum of five (5) minutes each.
  5. No speaker may give his or her time to any other speaker. At the discretion of the Chairman, the time allowed for any speaker may be extended.
- (b) Speaker Registration. Persons, other than staff and the applicant (where applicable), wishing to speak on an advertised public hearing item shall, prior to the item being heard, register with the County Administrator on the forms provided. Five (5) or more persons deemed by the Board to be associated together or otherwise represent a common point of view, as proponents or opponents on any item may be requested to select a spokesperson.
- (2) Miscellaneous Items:
- (a) Organizational or Group Speakers. Prior to making his/her comments, any person representing an organization or other persons shall indicate who he/she represents and how he/she received authorization to speak on behalf of such organization or group of persons. The Board may make further inquiry into the represented authority of such person if necessary.
  - (b) Restrictions on Comments Deemed Not Germane to the Item. Notwithstanding any provisions herein, any Board member may interrupt and/or stop any presentation that discusses matters that need not be considered in deciding the matter then before the Board for consideration. At any Board proceeding, the Chairman, unless overruled by majority of the Board members present, may

restrict or terminate presentations which in the chairman's judgment are frivolous, unduly repetitive or out of order.

- (c) Public Officials. Notwithstanding other provisions hereof, the Board may allow any elected or appointed public official or representative thereof, to appear and make presentations at any time with regard to matters under consideration.
  - (d) Continued Public Hearings. In any matter where it is known that a scheduled public hearing will be continued to a future date certain, the staff report may be abbreviated and public comment may be limited to those persons who state that they believe they cannot be available to speak on the date to which the public hearing is being continued. Such persons may make their comments at the current meeting; provided, however, that upon making their comments, such persons shall waive the right to repeat or make substantially the same presentation at any subsequent meeting on the same subject.
- D. Other Agenda Items Before the Board: In addition to public hearing, public comment and public petition items, with the approval of the Board, members of the public may speak on other Board agenda items.
- I. Registration: Persons wishing to speak on agenda items other than advertised public hearing items, public comment on general topics and public petition items, shall register to speak on the form provided by the County prior to the item being called by the Chairman to be heard.
  - II Time Limits: Where the Board has requested or otherwise authorized public input on agenda items other than public hearing, public comment on general topic, or public petitions items, speakers will be limited to a maximum of 5 minutes.

## **DIVISION 20 - PLANNING COMMISSION**

### **Sec. 2-1156. - Establishment; Powers and Duties.**

There is hereby established a Planning Commission, which shall have the following powers and duties:

- A. To serve as the local planning agency (LPA), and land development regulation commission as required by F.S. §§ 163.3174 and 163.3194;
- B. To prepare, or cause to be prepared, the Collier County GMP, or element or portion thereof, and to submit to the BCC an annual report recommending amendments to such plan, element, or portion thereof;
- C. To prepare, or cause to be prepared, the LDC to implement the Collier County GMP, and to submit to the BCC an annual report recommending amendments to the LDC;
- D. To initiate, hear, consider, and make recommendations to the BCC on applications for amendment to the text of the Collier County GMP and the LDC;
- E. To initiate, review, hear, and make recommendations to the BCC on applications for amendment to the future land use map of the Collier County GMP or the official zoning atlas of the LDC;
- F. To hear, consider, and make recommendations to the BCC on applications for conditional use permits;
- G. To make its special knowledge and expertise available upon reasonable written request and authorization of the BCC to any official, department, board, commission, or agency of the County, state, or federal governments;
- H. To recommend to the BCC additional or amended rules of procedure not inconsistent with this section to govern the Planning Commission's proceedings;
- I. To perform those functions, powers and duties of the Planning Commission as set forth in chapter 67-1246, Laws of Florida, incorporated herein and by reference made a part hereof, as said chapter has been or may be amended;
- J. To consider and take final action regarding preliminary subdivision plats processed pursuant to the provisions of LDC section 4.03.00; and

- K. To sit as the County's Environmental Advisory Council and exercise all powers and duties under Ordinance 2009-32, as amended from time to time.

**Sec. 2-1157. - Membership.**

A. *Qualifications.*

1. Members of the Planning Commission shall be permanent residents and qualified electors of Collier County.
2. With respect to the five County Commission District members, although no specific experience requirements shall be necessary as a prerequisite to appointment, consideration shall be given to applicants who have experience or who have shown interest in the area of planning, zoning, and related fields. Further consideration in the appointment of Planning Commission members shall be made so as to provide the Planning Commission with the needed technical, professional, business, and/or administrative expertise to accomplish the duties and functions of the Planning Commission.
3. The two at-large environmental members are expected to provide the Planning Commission with technical expertise on environmental matters, and shall demonstrate evidence of expertise in 1 or more of the following areas related to environmental protection and natural resources management: air quality, biology (including any of the subdisciplines such as botany, ecology, zoology, etc.), coastal processes, estuarine processes, hazardous waste, hydrogeology, hydrology, hydraulics, land use law, land use planning, pollution control, solid waste, stormwater management, water resources, wildlife management, or other representative area deemed appropriate by the BCC, with a Board preference for one of these members with an expertise in biology and/or wildlife management, and the other with an expertise in water and/or hydrology.
4. The appointment of all members to the Planning Commission shall be by resolution of the BCC. In the event that any member is no longer a qualified elector or is convicted of a felony or an offense involving moral turpitude while in office, the BCC shall terminate the appointment of such person as a member of the Planning Commission.
5. A representative of the school district, appointed by the school board, shall serve as a non-voting member of the Planning Commission unless the BCC grants voting status to the school district representative. The school district member of the Planning Commission shall attend those Planning Commission meetings at which GMP amendments and rezoning that would, if approved, increase residential density of the property that is the subject of the application being considered.

- B. **Appointment.** The Planning Commission shall be composed of 7 members to be appointed by the BCC, together with the representative of the school district. Of these seven members, there shall be one member from each of the five County Commission Districts, and two at-large environmental members. Planning Commission Candidates for the five County Commission District seats must be nominated by the Commissioner of the District in which the candidate resides for both initial and subsequent terms and receive a simple majority vote of the Board of County Commissioners. The two at large members can be nominated by any Commissioner, but must receive a four-fifths vote of the BCC for appointment or reappointment.
- C. **Term.** Terms of office of Planning Commission members shall be for not less than two nor more than four years and not more than a minority of such members' terms shall expire in any one year. Appointments to fill any vacancy on the Planning Commission shall be for the remainder of the unexpired term of office. No meetings of a Planning Commission shall be held when the membership is less than five.
- D. **Removal from office.**
1. Any member of the Planning Commission may be removed from office by a four-fifths vote of the BCC, but such member shall be entitled to a public hearing and reconsideration of the vote if he so requests in writing within 30 days of the date on which the vote is taken.
  2. If any member of the Planning Commission fails to attend 2 consecutive Planning Commission meetings without cause, the Planning Commission shall declare the member's office vacant and the vacancy shall be filled by the BCC.
- E. **Officers.** The membership of the Planning Commission shall elect a chairman and vice-chairman from among the members. Officers' terms shall be for 1 year, with eligibility for reelection.

**Sec. 2-1158. - Quorum and Voting.**

- The presence of 4 or more members shall constitute a quorum of the Planning Commission necessary to take action and transact business. In addition, a simple majority vote of at least 4 members present and voting shall be necessary in order to forward a formal recommendation of approval, approval with conditions, denial, or other recommendation to the BCC.

(Ord. No. 2009-29, § 1; Ord. No. 2013-50, § 1)

**Sec. 2-1159. - Rules of Procedure.**

- (a) The Planning Commission shall, by a majority vote of the entire membership, adopt rules of procedure for the transaction of business, and shall keep a record of meetings, resolutions, findings, and determinations. The Planning Commission may provide for transcription of such hearings and proceedings, or portions of hearings and proceedings, as may be deemed necessary.
- (b) The Planning Commission may, from time to time, adopt and amend bylaws and rules of procedure not inconsistent with the provisions of these regulations.

**Sec. 2-1160. - Compensation.**

- The members of the Planning Commission shall serve without compensation, but may be reimbursed for such travel, mileage, and/or per diem expenses as may be authorized by the BCC.

**Sec. 2-1161. - Meetings.**

- (a) In order to provide convenience and promote public participation, meetings of the Planning Commission shall be held in the Immokalee area when matters pending before the Planning Commission are of sufficient concern to the Immokalee area to warrant such a meeting. The Planning Commission shall, by majority vote, make such determination at 1 of its regularly scheduled meetings well enough in advance to allow sufficient time to advertise such Immokalee meeting. All other meetings shall be held at the Collier County Government Center, Naples, Florida, unless otherwise specified by the Planning Commission or the BCC.
- (b) All meetings and hearings of the Planning Commission shall be open to the public.

**Sec. 2-1162. - Staff.**

- The community development services division shall be the professional staff of the Planning Commission.

**Sec. 2-1163. - Appeals.**

As to any land development petition or application upon which the Planning Commission takes final action, an aggrieved petitioner, applicant, or aggrieved party may appeal such final action to the Board of County Commissioners. An aggrieved or adversely affected party is defined as any person or group of persons which will suffer an adverse affect to an interest protected or furthered by the Collier County Growth Management Plan, Land Development Code, or building

code(s). The alleged adverse interest may be shared in common with other members of the community at large, but shall exceed in degree the general interest in community good shared by all persons. The Board of County Commissioners may affirm, affirm with conditions, reverse or reverse with conditions the action of the Planning Commission. Such appeal shall be filed with the Development Services Director within 30 days of the date of final action by the Planning Commission and shall be noticed for hearing with the Board of County Commissioners, as applicable, in the same manner as the petition or application was noticed for hearing with the Planning Commission. The cost of notice shall be borne by the petitioner, applicant or aggrieved party.

**Sec. 2-1164. - Repeal of Ordinance.**

Collier County hereby readopts Section 8.03.00 (Planning Commission) of the Collier County Land Development Code in its entirety, as a separate, stand-alone ordinance, as set out herein.

Concurrent with the effective date of this Ordinance, Section 8.03.00 (Planning Commission) of the Collier County Land Development Code is hereby repealed in its entirety.