

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-13
TITLE: Administrative Procedure for Retention of Exhibits Submitted During Proceedings Before the Lee County Hearing Examiner.	ADOPTED: 07/05/95
	AMENDED: 08/09/05
	ORIGINATING DEPARTMENT: County Attorney's Office

PURPOSE/SCOPE:

The purpose of this administrative code is to establish a procedure for the retention of exhibits submitted at all code enforcement cases, all zoning, variance, special permit and special exception cases, as well as all of the proceedings for administrative appeals heard before the Lee County Hearing Examiner. This code identifies the custodian of the record, sets forth the time and manner for retention of exhibits, and implements the relevant provisions of F.S. 257.36 and related Florida Administrative Code (FAC) rules. This procedure does not apply to visual aids displayed at public hearings before the Hearing Examiner intended for display or demonstration purposes only.

POLICY/PROCEDURE:

SECTION 1. DEFINITIONS

- 1.1 "Attachment" means those records included as an integral part of any staff report, code enforcement file or appellate request when they are submitted or presented to the Hearing Examiner's Office. Typically such records would be of letter or legal size and would be cross-referenced as an attachment. Examples would include reports from other staff departments, site location maps, or a map of local zoning classifications, etc.
- 1.2 "Case Files" means those documents that are the official records memorializing proceedings before the Hearing Examiner. For example, in Code Enforcement cases, the case file contains all orders finding violations, imposing fines, acknowledging compliance, mitigating fines or liens, etc., including any attachments and exhibits. In rezoning, variance and special permit or exception cases, the case file contains all hearing examiner orders recommending action to the Board of County Commissioners or rendering a final decision, including all attachments and exhibits. For administrative appeals, the case file contains all orders rendered by the Hearing Examiner including any attachments and exhibits.
- 1.3 "Custodian" means the person who has responsibility for retention of the record. The custodian for Code Enforcement files is the Code Enforcement Department of Community Development. (See AC 2-14, Rule 1.07(a)). The custodian for Zoning/Variance Hearing and Administrative Appeal case files is the Administrative Assistant in the Division of Zoning and Development Services designated by the Director of Community Development unless the department involved in the appeal is not Community Development, in which case the custodian will be the person(s) designated by the appropriate department's director.
- 1.4 "Duplicate record" means any material that is a duplicate, facsimile or likeness of a document that exists separately elsewhere in the same case file, and therefore, has no independent legal, fiscal, historical or administrative value.
- 1.5 "Exhibit" means any document marked or identified as an "exhibit," including but not limited to models, photographic reproductions, video or audio tapes, maps, aerial photographs, charts or other forms of demonstrative evidence that may be included as part of the official record in any proceeding before the Hearing Examiner. Exhibits typically are larger in size than a letter or legal sized page and may be a duplicate record, supporting document or part of a case file.

AC-2-13 (Continued)

- 1.6 "Non-Exhibits" means materials that are used solely for display or demonstration purposes and typically are not marked as an exhibit or entered into evidence in a case. Visual aids are non-exhibits.
- 1.7 "Supporting documents" means those public records which are needed to trace the actions, steps or decisions of the hearing examiner that result in a final order or decision. See FAC 1B-24.001(3)(o). Supporting documents are retained in the same manner and for the same period of time as case files.

SECTION 2. DETERMINING THE PROPER RETENTION PERIOD FOR EXHIBITS

- 2.1 The appropriate record retention period of an exhibit is determined by the actual function or use made of a particular exhibit.
- a. Materials that are intended merely as an aid in visualizing a location or a structure, or are otherwise used to demonstrate a non-material fact, are not considered as exhibits for the purpose of record retention. As a general rule, non-exhibits are not marked or entered into evidence as an exhibit. Non-exhibits will be returned to the person providing them at the conclusion of the proceeding before the Hearing Examiner. These materials may include, but are not limited to, photographs, videotapes, drawings or maps.
- b. All documents marked or identified as an exhibit by any person appearing at a public hearing, and then submitted and accepted as a record exhibit, will be retained by the custodian of such records for the applicable minimum record retention period. Examples would include, but are not limited to, those items listed above as examples as well as: charts, diagrams, site plans, land use or zoning maps, aerial photographs and any reports submitted by a participant or requested by the Hearing Examiner.
- 2.2 As defined above, any exhibit that duplicates information otherwise found in the official record of a case is a duplicate record. The statutory requirements for record retention imposed by Section 257.36 F.S. (see below), do not apply to duplicate records. Similarly, it is not necessary to send a Records Disposition Request to the State Division of Libraries and Information Services prior to disposing of duplicate records.
- 2.3 Exhibits marked and entered into evidence and specifically referenced in a Hearing Examiner order or decision that are not duplicate records will be considered either supporting documents or a part of the official case files for record retention purposes. Examples would include any of those examples described in section 2.1 above, as well as an enlarged photograph, aerial photograph, map or site plan, etc.

SECTION 3. RECORD RETENTION SCHEDULE

- 3.1 The custodian will observe the following minimum record retention guidelines:
- a. Case files and supporting documents: will be retained for a period of five (5) years from the later of: the rendition of the Hearing Examiner's or BOCC's decision, or of a final determination following appellate review. Prior to disposal or destruction of these records, the custodian will comply with the provisions of Section 257.36 (6), F.S. See General Records Schedule for Local Government Agencies, Publication GS1-L.
- b. Duplicate records: exhibit's submitters who submit a written request within thirty (30) days of a final decision will be notified in writing of the availability for pick up of duplicate records. Such notification to submitters will not be sent until all times for appellate remedies have been exhausted or expired. If the exhibit's submitter fails to claim the exhibit from the custodian within a thirty (30) day period following the mailing of a notice for pick-up, the custodian may elect to destroy the exhibit without further notice to the Division of Library and Information Services or the exhibit's submitter.