

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20041473

1. REQUESTED MOTION:

ACTION REQUESTED: Approval of Revisions to Lee County Administrative Code (AC) Section 2-2, Zoning/Land Use and Code Enforcement Hearing Examiner's Office. Approve a Resolution to amend AC-2-2.

WHY ACTION IS NECESSARY:

For general "housekeeping" purposes, and to update the requirements and processes relating to the employment of the Deputy Hearing Examiner and Staff for the Hearing Examiner's Department.

WHAT ACTION ACCOMPLISHES:

Creates the Deputy Hearing Examiner position as an employee position under the direct supervision of the Chief Hearing Examiner; clarifies the administrative authority of the Chief Hearing Examiner; establishes new base salaries for both Hearing Examiner positions; preserves the decision making autonomy of each Hearing Examiner; and establishes punitive measures for any Hearing Examiner attempting to influence or interfere with the decisions of the other Hearing Examiner.

2. DEPARTMENTAL CATEGORY: 13
COMMISSION DISTRICT: All

A13A

3. MEETING DATE:

11-23-2004

4. AGENDA:

5. REQUIREMENT/PURPOSE:
(Specify)

6. REQUESTOR OF INFORMATION:

<input type="checkbox"/>	CONSENT	<input type="checkbox"/>	STATUTE	<input type="checkbox"/>	A. COMMISSIONER	
<input checked="" type="checkbox"/>	ADMINISTRATIVE	<input type="checkbox"/>	ORDINANCE	<input type="checkbox"/>	B. DEPARTMENT	Diana M. Parker
<input type="checkbox"/>	APPEALS	<input checked="" type="checkbox"/>	ADMIN. CODE	<input type="checkbox"/>	C. DIVISION	Hearing Examiner
<input type="checkbox"/>	PUBLIC	<input type="checkbox"/>	OTHER	<input type="checkbox"/>	BY:	<i>Diana M. Parker</i>
<input type="checkbox"/>	WALK ON	<input type="checkbox"/>		<input type="checkbox"/>		
<input type="checkbox"/>	TIME REQUIRED:	<input type="checkbox"/>		<input type="checkbox"/>		

***1-BACKGROUND - SEE PAGE 2**

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
<i>Day?</i>				<i>Smith</i>	OA	OM	Risk	GC	
				<i>Smith</i>	<i>11/4/04</i>	<i>11/4/04</i>	<i>11/4/04</i>	<i>11/4/04</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

<input type="checkbox"/>	APPROVED
<input type="checkbox"/>	DENIED
<input type="checkbox"/>	DEFERRED
<input type="checkbox"/>	OTHER

7. **BACKGROUND:** Administrative Code (AC) Section 2-2 was initially adopted in 1990 to supersede AC Section 1-7, which originally created the Zoning and Land Use Hearing Examiner's Department. The 1990 adoption created the second Hearing Examiner position and utilized the Hearing Examiner's Department to replace and supersede the Lee County Code Enforcement Board. AC Section 2-2 was amended in 1995 for housekeeping purposes, but the delegation of authority and general provisions were unchanged. Since 1990, Hearing Examiners have been hired, by contract with, and under the direct supervision of, the Board of County Commissioners (BOCC), and were individually evaluated and compensated by the Board of County Commissioners.

The proposed changes would continue the Chief Hearing Examiner position as a contract employee reporting solely and directly to the BOCC, but would create the Deputy Hearing Examiner position as a regular (non-contract) employee within the Hearing Examiner's Office, akin to the Deputy positions in the County Attorney's Office and the County Manager's Office. The Deputy Hearing Examiner would be hired by, and report directly to, the Chief Hearing Examiner in all administrative duties and responsibilities, but would be answerable solely to the BOCC for his/her decisions in the zoning, land use and Code Enforcement cases.

By creating the Deputy Hearing Examiner position as a regular (non-contract) employee position, the Hearing Examiner's Office would follow the same hierarchical structure which has worked well for the other major departments of Lee County. The non-contract position will place the responsibility for the employment and direct supervision on the Chief Hearing Examiner, instead of the BOCC which has no day-to-day contact or knowledge of the Deputy Hearing Examiner's work habits, office or hearing demeanor, or ability to adequately perform all of his/her duties.

The autonomy of each Hearing Examiner to make his/her own decision in each zoning, land use and Code Enforcement case is assured and safeguarded by two provisions which expressly prohibit the Chief and the Deputy Hearing Examiner from attempting to interfere or influence the other Hearing Examiner's decision, under penalty of immediate termination of employment if such action(s) are found to have occurred.

As there are no other full-time zoning/land use and code enforcement hearing examiners within Florida, the new base salaries were established to be comparable to the salaries of similar administrative law judge or quasi-judicial positions within the State, and to the starting salary of experienced attorneys in the local private law firms practicing zoning and land use law.

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BS# 20041473

Rec. by CoAtty
Date: 11/3/04
Time: 9:35
Forwarded To: ADMIN 11/3/04 4:45

RECEIVED BY COUNTY ADMIN
11/3/04
K. S. O. S. O.
COUNTY ADMIN FORWARDED TO:
11/3/04
3/3/04

LEE COUNTY RESOLUTION NO. _____

**A RESOLUTION OF THE LEE COUNTY BOARD OF
COUNTY COMMISSIONERS RELATING TO AMENDMENTS
TO THE LEE COUNTY ADMINISTRATIVE CODE AS
ADOPTED BY LEE COUNTY ORDINANCE NO. 97-23;
PROVIDING FOR APPROVAL OF CERTAIN AMENDMENTS
TO THE LEE COUNTY ADMINISTRATIVE CODE;
PROVIDING FOR SEVERABILITY; PROVIDING FOR AN
EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 96-01, creating a charter form of government for Lee County pursuant to Section 125.80 and ff., Florida Statutes, and which was approved and ratified by the Electorate of Lee County on November 5, 1996; and,

WHEREAS, the Board of County Commissioners has previously enacted Lee County Ordinance No. 97-23, which adopted the Lee County Administrative Code pursuant to Section 2.2.E. of Ordinance No. 96-01, the Lee County Charter; and,

WHEREAS, Lee County Ordinance No. 97-23 at Section III allows and provides for amendments to the Lee County Administrative Code to be made by Resolution of the Board of County Commissioners at a regularly scheduled Board of County Commissioners' meeting; and,

WHEREAS, certain amendments to the Lee County Administrative Code are now being proposed, and the Board of County Commissioners finds that such proposed amendments are acceptable, serve a public purpose and are consistent with the terms and conditions of Lee County Ordinance No. 96-01, the Lee County Charter.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY

COMMISSIONERS that:

1. The above preamble is hereby accepted and approved as being true and accurate, and is adopted and incorporated herein as if set out further at length.
2. The proposed amendment to the Lee County Administrative Code AC-2-2 (attached hereto as Exhibit "A"), is approved, and is hereby directed to be incorporated into the Lee County Administrative Code as indicated in the amendment.
3. The provisions of this Resolution are severable, and it is the intention to confer to the whole or any part of this Resolution, the powers herein provided for. If any of the provisions of this Resolution shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the other remaining provisions of this Resolution. It is hereby declared to be the Board's legislative intent that this Resolution would have been adopted had such an unconstitutional provision not been included herein.
4. This Resolution shall become effective immediately upon its adoption by the Board of County Commissioners.

The foregoing Resolution was offered by Commissioner _____,
who moved its adoption. The motion was seconded by Commissioner _____
and, being put to a vote, the vote was as follows:

ROBERT P. JANES	_____
DOUGLAS R. ST. CERNY	_____
RAY JUDAH	_____
DISTRICT #4 COMMISSIONER	_____
JOHN E. ALBION	_____

DULY PASSED AND ADOPTED this ____ day of _____, 2004.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-2
TITLE: Zoning/Land Use and Code Enforcement Hearing Examiner's Office	ADOPTED: 9/5/90
	AMENDED: 01/04/95 and 11/30/04
	ORIGINATING DEPARTMENT: Hearing Examiner

PURPOSE/SCOPE:

The purpose of this Administrative Policy is to establish, staff, and provide for the administration of a Zoning/Land Use and Code Enforcement Hearing Examiner's Office. This administrative code may only be amended, revised, superseded or repealed by formal resolution of the Board of County Commissioners.

POLICY/PROCEDURE:

I. Position

The Board of County Commissioners (Board) hereby creates the Hearing Examiner Department and the positions of Chief Hearing Examiner and Deputy Hearing Examiner. Each Hearing Examiner shall have the powers and duties enumerated in the Lee County Land Development Code and other applicable County ordinances. The Chief Hearing Examiner ~~All Hearing Examiners~~ shall be hired solely and exclusively by the Board ~~in the same manner as the County Administrator is hired~~, and shall serve at the pleasure of the Board ~~and any Hearing Examiner may be removed at any time, with or without cause, by an absolute majority of the Board.~~ The Deputy Hearing Examiner shall be hired by the Chief Hearing Examiner and shall be subject to all policies, rules and regulations of the Hearing Examiner Department, except as set out in the following paragraph and Section VI hereinbelow.

Because of the judicial nature of the position, all Hearing Examiners shall report directly to the Board in regard to their decision making duties, and shall not be subject to the administration or supervision of the County ~~Administrator~~ Manager. All Hearing Examiners and members of the department are hereby specifically exempted from the supervisory and employment provisions of Lee County Ordinance 82-37, as may be amended or replaced. This provision does not prohibit the Chief Hearing Examiner from electing to utilize all or a portion of the County's existing administrative, supervisory and employment provisions in the administration of the Hearing Examiner Department.

II. Qualifications

~~Each Hearing Examiner shall possess sufficient experience and expertise to carry out the duties of the position; a minimum of 5 years of experience in the practice of Florida law relating to growth management statutes, local land use and zoning matters, comprehensive planning, code enforcement, judicial and administrative procedures, and knowledge of the rules of evidence. Each Hearing Examiner shall exhibit demonstrated ability in the areas of local land use law and zoning, comprehensive planning, code enforcement, judicial and administrative procedures.~~ Each Hearing Examiner shall be licensed to practice law in either a state or a branch of the federal court system Florida, and shall hold a law degree from an A.B.A. accredited law school. Lee County residency is required within 180 days of successful completion of the 6-month probationary period.

III. Salary and Benefits

The position of Chief Hearing Examiner shall be a full time position ~~to be occupied by the senior Hearing Examiner~~ and shall carry a base salary of ~~\$65,000~~ \$85,000. The position of Deputy Hearing Examiner shall be a full time position and shall carry a base salary of ~~\$58,500~~ \$75,000, upon successful completion of a 6-month probationary period. Actual compensation for the Chief Hearing Examiner position shall be determined by the Board, and shall be reflected in an employment contract. The actual salary for the Deputy Hearing Examiner position will be within the range established in the Lee County Classification and Pay Plan. Each position shall receive full benefits given for Administration positions at pay range 23 or above of the Lee County Classification and Pay Plan. No overtime pay shall be authorized for any Hearing Examiner.

Hearing Examiners pro tempore, if necessary, shall be contracted for by the Chief Hearing Examiner, subject to Board approval. All Hearing Examiners pro tempore shall be compensated at a rate not to exceed ~~\$35.00~~ \$75.00 per hour with no benefits being paid for such position(s).

IV. Staff

The Hearing Examiner Department shall be adequately staffed to carry out any duties assigned or designated by the Board. The Chief Hearing Examiner, following consultation with, and the advice of, the Lee County Human Resources Department, shall have the right to create, reclassify, and fill positions for the Hearing Examiner Department, ~~positions~~ which are the equivalent of any position found in the Lee County Classification and Pay Plan, subject to the constraints of the budget of the Hearing Examiner Department.

V. General Administrative Duties

~~The senior Hearing Examiner shall be designated the Chief Hearing Examiner and shall be responsible for the day-to-day administration and policy setting of the Hearing Examiner Department. Said administration includes overview of all Department personnel matters, the timely rendering of decisions and recommendations by the Hearing Examiners, and the distribution of cases and work load among the Hearing Examiners.~~ The Chief Hearing Examiner shall also have all rights, benefits, privileges, and authority held by the County Administrator Manager with respect to the internal administration of the Hearing Examiner Department, but said rights and authority do not extend to influencing or compelling particular decisions by the

Deputy Hearing Examiner in any land use, zoning or code enforcement case. The Chief Hearing Examiner shall consult, as necessary, with the Board and shall represent and act for the Hearing Examiner Department in connection with any County activities and functions.

~~The authority of the Chief Hearing Examiner is specifically limited to administration of the Hearing Examiner Department, liaison and coordination with other Lee County government departments, divisions and agencies, and creating and operating a random scheduling system. It is the specific intent of the Board that, following an initial training and familiarization period not to exceed 180 days, all Lee County Hearing Examiners shall be of equivalent qualifications and that each shall be capable of hearing, and shall hear, all types of cases which the Hearing Examiner Department is authorized to hear.~~

VI. Hearing Examiner Independence in Decision Making

It is the intent of the Board that, following an initial training and familiarization period not to exceed 180 days, all the Lee County Hearing Examiners shall be of equivalent qualification with regard to hearing and deciding land use, zoning, and code enforcement cases, and shall be answerable only to the Board for their individual decisions.

In no event shall any Hearing Examiner knowingly attempt to influence a decision or interfere with the decision making duties of any other Hearing Examiner. Any such attempt shall be timely reported by the affected Hearing Examiner to the County Attorney's Office for investigation and, if found to have occurred, shall be grounds for immediate termination of the initiating Hearing Examiner. Failure by the affected Hearing Examiner to report such attempts may be cause for termination of both Hearing Examiners.

Nothing in this section shall prohibit general discussions of law or procedure by and between the Hearing Examiners, or their staff, regarding any pending or proposed cases or appeals.

All other improper or ex parte communication attempts to any Hearing Examiner shall be governed by the provisions of LDC Sections 2-191 and 34-52.