



MEMORANDUM

DATE: August 20, 2015

TO: Honorable Board of County Commissioners
Planning and Zoning Board

FROM: Claire Jubb, Community Development Department Interim Director
Shaun Cullinan, Charlotte County Planning and Zoning Official
Jie Shao, Planner, Principal

RE: **Revisions to Section 3-9-10: Amendments**

Staff Recommendation:

Staff is requesting the Charlotte County Board of County Commissioners (Board) approve the proposed revisions to Section 3-9-10: Amendments.

The Planning and Zoning Board proposed recommendations:

On April 14, 2015, the Planning and Zoning (P&Z) Board will recommend approval/denial of the proposed revisions to Section 3-9-10: Amendments.

Analysis:

Phase I of the revisions to the County's Land Development Regulations focused on revisions to the conventional zoning districts and some sections of Article I: In General and Article III: Special Regulations of Chapter 3-9: Zoning. Phase I was adopted by the Board on November 25, 2014 and Phase II.1 was adopted by the Board on February 24, 2015. Phase II.2 was adopted by the Board on April 28, 2015. Phase II.3 was adopted by the Board on May 26, 2015. Revisions to Section 3-9-79.1: Parking of Boats, RVs, Trucks and Trailers were adopted by the Board on July 28, 2015. Staff has been continually working with the public to solicit comments and to discuss all proposed changes. At this time, staff is bringing revisions to Section 3-9-10: Amendments the Board for consideration. The major changes being proposed are as follows:

- Revising the initiation of proposals for amendments to be "anyone with a legal interest in the property or this chapter" instead of just "the owner of the land to be rezoned." Staff is also proposing to add conditions to define who will be qualified as an applicant.
- Adding the mailed notice, posted notice, and constructive notice requirements to be consistent with the existing process.

COMMUNITY DEVELOPMENT DEPARTMENT

18400 Murdock Circle

Port Charlotte, FL 33948

Phone: 941.764.4909 | Fax: 941.764-4180

- Modifying the standards of approval to be consistent with the Snyder ruling, *which states that:*
"upon consideration, we hold that a landowner seeking to rezone property has the burden of proving that the proposal is consistent with the comprehensive plan and complies with all procedural requirements of the zoning ordinance. At this point, the burden shifts to the governmental board to demonstrate that maintaining the existing zoning classification with respect to the property accomplishes a legitimate public purpose. In effect, the landowners' traditional remedies will be subsumed within this rule, and the board will now have the burden of showing that the refusal to rezone the property is not arbitrary, discriminatory, or unreasonable. If the board carries its burden, the application should be denied."
- Adding notice of decisions, the procedure of withdrawal of applications, and postponement of scheduled public hearings to be consistent with the existing process.

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18500 Murdock Circle
Port Charlotte, FL 33948
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1 **Sec. 3-9-10. Amendments**

- 2 (a) *Generally.* This Chapter and the Official Zoning Atlas may, from time to time, be amended or
3 repealed as provided in this Section.
- 4 (b) *Initiation of proposals for amendments.* An amendment to this Chapter or the Zoning Atlas may
5 be proposed by:
- 6 ~~(1) The board of county commissioners;~~
7 ~~(2) The planning and zoning board;~~
8 ~~(3) The board of zoning appeals; or~~
- 9 ~~(4) The owner of the land to be rezoned, anyone with a legal interest in the property or this Chapter;~~
10 ~~however, an applicant who is not the owner of the subject property shall be required to present~~
11 ~~evidence of legal authority from the owner to submit an application.~~
- 12 (c) *Written petition.* Applications for rezoning shall be obtained from and filed with the planning
13 appropriate County department-Department and shall be accompanied by the applicable fee to be
14 established by resolution of the board of county commissionersBCC. No application for zoning
15 amendment shall be heard by the planning and zoning boardP&Z Board until such fees and charges
16 have been paid by the petitioner or waived by the board of county commissionersBCC. The
17 Department Dplanning director or his/herits designee shall review the application for sufficiency and
18 completeness. If additional information is required, the Department planning dDirector or his/her
19 designee shall advise the applicant within ten ~~(10)~~ working days after receipt of the application. Upon
20 finding the application to be correct and complete, it shall be scheduled for a public hearing before
21 the planning and zoning board-P&Z Board at the next available meeting. The Department planning
22 dDirector or his/her designee shall also review the application for consistency with the
23 Comprehensive Pplan and the applicable land development regulations used to implement the
24 Comprehensive Pplan. Should any conflict exist as a result of the consistency review, the applicant
25 shall be advised of such at least five ~~(5)~~ days prior to the planning and zoning boardP&Z Board
26 meeting at which the application is scheduled to be heard. At a minimum, Applications for rezoning
27 shall include, but not be limited to, theinclude the following:
- 28 (1) A certified survey of the property to be rezoned.
- 29 (2) A legal description of the entire property to be rezoned, including the size of the parcel involved.
- 30 (3) A narrative stating the applicant's justification for the rezoning request based upon the
31 standards for approval of such a rezoning request set forth in subsection (h)(1).
- 32 ~~(4) A notarized affidavit which lists the names and addresses of property owners within two~~
33 ~~hundred (200) feet of the subject property (excluding street rights-of-way) with corresponding~~
34 ~~address labels. This information shall be based upon the latest available property records of the~~
35 ~~Pproperty Aappraiser's Ooffice. The applicant shall also provide a map clearly showing the~~
36 ~~subject property and all of the properties within two hundred (200) feet.~~
- 37 (d) *Published Notice.* No request for a zoning regulation amendment may be considered by the planning
38 and zoningP&Z Bboard until such time as notice of a public hearing on the proposed amendment
39 has been given by publication in a newspaper of general circulation in the county at least fifteen (15)
40 calendar days in advance of the public hearing.
- 41 (e) *Mailed Notice.*
- 42 (1) The County shall notify the owner of each property located within 200 feet of the subject
43 property via first-class mail sent to the last address listed for each owner in the County Property
44 Appraiser records except as provided herein.

Land Development Regulations
Chapter 3-9. Zoning
Article I. In General

Sec. 3-9-10. Amendments

1 (2) The notice shall be mailed at least ten days prior to the date of the P&Z public hearing and at
2 least 30 days prior to the date of each BCC public hearing.

3 (3)- Mailed notice under this Section shall not be required if a rezoning directly affects more than 50
4 properties owned by a total of at least 50 different property owners, and the County elects to
5 publish notice of the hearing as provided for in this Code.

6 (4) -Failure to receive a mailed notice shall not invalidate the proceedings.

7 (f) *Posted Notice.* The County shall post notice at the subject property not less than ten days prior to
8 the public hearing at which the application will be heard-. The notice shall contain the time, date and
9 place of the public hearing and shall state the action being considered. The notice shall be posted on
10 the subject property or at a point visible from the nearest public street.

11 (g) *Constructive Notice.* Minor defects in notice shall not impair the notice or invalidate proceedings if a
12 good faith attempt has been made to comply with applicable notice requirements.

13 (h) *Standards for approval.*

14 (1) -For the rezoning of land, the recommendations of the ~~planning and zoning~~ P&Z Board
15 and decision of the Board of County Commissioners (BCC) shall be made after giving due
16 consideration to:

17
18 a. Whether the proposed change ~~would be contrary~~ is consistent with ~~to the comprehensive~~
19 Comprehensive land use Plan;

20 b. The existing land use pattern in adjacent areas;

21 c. ~~The capacity of The population density pattern and possible increased load on public~~
22 facilities and services, including but not limited to schools, roads, recreational facilities,
23 wastewater treatment, water supply, and stormwater drainage facilities ~~such as schools,~~
24 utilities and streets;

25 d. ~~Whether changed conditions make the passage of the proposed amendment appropriate;~~

26 e. Whether the proposed change will adversely influence living conditions or property values
27 in adjacent areas;

28 f. Whether the proposed change will affect public safety;

29 g. ~~Whether the proposed change will reduce light and air to adjacent areas; and~~

30 h. ~~Whether there are substantial reasons why the property cannot be used in accordance with~~
31 existing zoning.

32 (2) Decision of the BCC:

33 a. The BCC must find that the Applicant has shown the proposal is consistent with the
34 Comprehensive Plan and complies with all procedural requirements of this zoning code;

35 b. Upon making such a positive finding, if the BCC wishes to deny the petition then the burden
36 shifts to the BCC to demonstrate that maintaining the existing zoning classification with
37 respect to the property accomplishes a legitimate public purpose.

38 (23) When pertaining to other proposed amendments of these zoning regulations, the ~~planning and~~
39 zoning bP&Z Board shall consider:

40 a. The need and justification for the proposed change; and

41 b. The relationship of the proposed amendment to the comprehensive plan.

42 (fi) *Board of Ceounty Ceommissioners action on ~~planning and zoning board~~P&Z Board*
43 recommendations. Upon receipt of the ~~planning and zoning b~~P&Z Board recommendations, the

Land Development Regulations
Chapter 3-9. Zoning
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1 ~~board of county commissioners~~BCC shall hold a second public hearing with notice to be given as
2 required by law (Section 125.66 F.S.) ~~and by~~ In addition to the notice provided for in subsections (d),
3 (e), and (f) above, notice of the time and place of the public hearing before the board of county
4 commissioners shall be sent at least thirty (30) calendar days in advance of the hearing by first class
5 mail to the owner of the subject property or his designated agent or attorney. Notice of the time and
6 place of the public hearing before the board of county commissioners shall be sent at least fifteen
7 (15) calendar days in advance of the hearing by first class mail to all owners of property situated
8 within two hundred (200) feet of the property for which rezoning is sought. The notice shall contain
9 the time, date and place of the public hearing for the request and a brief description of the property
10 involved (subject property). Notice by mail shall be accomplished by depositing the notice in the
11 United States mail and shall be addressed to the property owner at the address shown on the latest
12 available tax rolls of Charlotte County as provided by the applicant. In addition, a sign shall be
13 posted conspicuously on the subject property.

14 ~~The sign shall contain the time, date and place of the public hearing and shall state the action being~~
15 ~~considered. Said sign shall be placed on the subject property at least ten (10) calendar days prior to~~
16 ~~the public hearing. Failure to strictly comply with these notice requirements shall not invalidate the~~
17 ~~proceedings.~~

18 (j) Notice of Decision. Written notice of decision shall be sent to the applicant and a copy shall be
19 placed on file with the County within ten business days of a decision being rendered, where it shall
20 be available for public inspection during regular office hours. A copy of the ordinance adopting the
21 change shall be sent to the applicant after the ordinance is recorded by the County Clerk.

22 ~~(kg) Limitations on the rezoning of property.~~ Whenever the board of county commissionersBCC has
23 denied an application for the rezoning of property, the planning and zoning ~~bP&Z~~ Board shall not
24 thereafter consider any application for the same rezoning of any part or all of the same property for a
25 period of six (6) months from the date of such action, except that this requirement may be waived by the
26 positive votes of a majority of the board of county commissionersBCC when the board BCC deems such
27 action necessary to prevent injustice or to facilitate the proper development of the county.

28 (k) Withdrawal of Application. An applicant or legally appointed representative may request the
29 withdrawal of a previously submitted application at any time. A request to withdraw an application
30 shall be provided in writing to the Zoning Official unless the applicant requests such withdrawal on
31 the record at a scheduled public hearing. A written request shall be signed by all persons who
32 signed the application or by a legally appointed representative. The Zoning Official may authorize a
33 refund of all or part of the application fee if an application is withdrawn more than four weeks prior to
34 the first scheduled public hearing. If a request to withdraw an application is made less than four
35 weeks prior to the first scheduled public hearing, then no part of the application fee shall be
36 refunded.

37 (l) Postponement of Scheduled Public Hearings by Applicant(s). An applicant may request
38 postponement of a scheduled public hearing to any one of the next four scheduled public meeting
39 dates of the presiding Board provided that such date is available. A request to postpone the
40 scheduled public hearing must be made in writing and must be received by the Zoning Official at
41 least 15 calendar days prior to the scheduled public hearing. The request shall be signed by all
42 persons who signed the application or by a legally appointed representative. The Zoning Official
43 shall remove the application from the agenda and mail notice of such change to all property owners
44 included in the original mailing. The notice of change shall indicate the application's postponement of
45 public hearing and shall include the date and time of the rescheduled public hearing if such
46 information is available. If the date and time of the rescheduled public hearing is not available at the
47 time of this mailing, a separate notice of public hearing shall be mailed in accordance with the
48 requirements of subsection (e) above. The applicant shall pay the cost of all additional published and
49 mailed notices if such notices are required.