

Chapter 9
DEVELOPMENT REVIEW PROCEDURES

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Section 901 Applicability

Prior to undertaking any development or use of land in unincorporated Polk County, a development approval shall be obtained in accordance with the procedures of this Chapter unless otherwise exempt. All development and use of land, whether or not subject to the procedures of this Chapter, is subject to all other provisions of this Code.

Section 902 Development Approval

Any development or use of land not exempted in Section 902C shall obtain approval through one or more of the development review procedures outlined in this Chapter according to the type of use or development.

A. *Compliance With This Chapter*

In addition to all required permits, permitted uses, conditional uses, subdivisions, Planned Developments, and Land Use District Modifications shall comply with the provisions of this Chapter, except as provided in Section 902C. A project may require more than one development review and approval. Building and other County or agency permits may be obtained after the approval of other development approvals required by this Chapter.

B. *Pre-requisites to Building Permit*

A building permit may not be issued unless the proposed development activity is authorized by a development approval (unless exempt) processed pursuant to this Chapter and conforms to Appendix A, Technical Standards Manual and all other applicable laws and regulations.

C. *Exemptions (Rev. 12/03/03 Ord. 03-38)*

The following types of development are exempt from the review procedures in this Chapter provided said development complies with all applicable requirements of this Code and obtains all applicable permits:

1. The construction or alteration of a single-family dwelling or duplex on a lot in a valid recorded subdivision plat approved prior to the adoption of this Code or on a lot of record;
2. The construction of a dwelling unit on a lot created consistent with this Code that did not require platting;

3. Non-residential development with unexpired engineering plans approved by the County Engineer and having obtained all other approvals prior to the effective date of this Code;
4. Bona fide agricultural activity as defined by Florida Statutes; and
5. Clearing and grubbing.

D. *Earthwork*

No earth moving, utility work, grading, construction or development activity may be undertaken unless the activity is authorized pursuant to this Chapter.

E. *Modifications After Approval (Revised 5/20/09 – Ord. 09-023)*

After approval has been issued, it shall be unlawful to substantially change, modify, alter, or otherwise deviate from the terms or conditions of the plan or approval without first obtaining an approval of the modification. The Land Development Director shall determine the type of review for the modification and a written record of the modification shall be maintained in the files of the Land Development Division.

F. *Cease and Desist Illegal Activity*

Prior to seeking any level of development approval (including variances, waivers, or modifications to prior approvals), the owner, applicant, or occupant must cease and desist all activity on the subject property that is not legally in compliance with this Code or any other condition imposed through prior development approval. This includes but is not limited to construction, excavation, parking or vehicles, storage of materials, or the operation of a business that is not legally meeting the requirements or exempted from this Code.

Section 903 Review Procedures

Development review procedures are divided into five primary levels according to the purpose of the review. The Level of Review shall be based upon the Use Tables in Chapters 2, 4 and 5, along with any overlay, subdivision and other requirements of this Code. A summary of the required review procedures and steps is shown in Tables 9.1 and 9.2. The Level of Review required for each type of development is as follows:

Table 9.1 Summary of Required Review Procedures (Rev. 02/14/07 – Ord. 07-004; Rev. 01/30/03 - Ord. 03-14)

Development Approval Requested	Submittal Required	Required Steps	Review Procedure
All other Apermitted@ uses on Use Tables in Chapters 2, 4 and 5	Final Development Plan	DRC	Level 2 (DRC Action)
Conditional Uses			
C-1 Conditional Uses ¹	As requested for permitting	Staff review	Level 1 (Admin. Action)
C-2 Conditional Uses ¹	Final Development Plan	DRC	Level 2 (DRC Action)
C-3 Conditional Uses ¹	Draft Development Plan and Impact Assessment Statement	DRC, and PC	Level 3 (PC Action)
C-4 Conditional Uses ¹	Final Development Plan and Impact Assessment Statement	DRC, PC and BoCC	Level 4 (BoCC Action)
Land Use District Modification	Application and Impact Assessment Statement	PC and BoCC	Level 4 (BoCC Action)
Code Amendments and Comprehensive Plan Amendments ²	Application	PC and BoCC	Level 4 (BoCC Action)
Planned Developments			
Planned Development Preliminary Plan Approval	Preliminary Plan and Impact Assessment Statement	DRC, PC	Level 3 (PC Action)
Build-out	Final Development Plan	DRC	Level 2 (DRC Action)
Minor Modification to Planned Development	Preliminary Plan ³	DRC	Level 2 (DRC Action)

1 All conditional uses shall comply with the conditions outlined in Chapter 3.

2 There shall be a transmittal and an adoption hearing on all text amendments and map amendments over ten acres.

3 Final Development Plans may be submitted at the option of the applicant.

Major Modification to Planned Development	Preliminary Plan	DRC, PC	Level 3 (PC Action)
Subdivision Plats			
Construction Plans	Construction Plans	DRC	Level 2 (DRC Action)
Modification to Construction Plans	Construction Plans	DRC	Level 2 (DRC Action)
Signage Plan 4	Signage Plan	PC, DRC	Level 3 (PC Action) Level 2 (DRC Action)
Final Plat	Final Plat	DRC and BoCC	Level 5 (Platting Approval)
Minor Plat	Final Plat	DRC and BoCC	Level 5 (Platting Approval)
Plat Modification	Final Plat	DRC and BoCC	Level 5 (Platting Approval)
Replat/Vacating 5	Construction Plans and Final Plat	DRC and BoCC	Level 5 (Platting Approval)

Table 9.2 Review Procedure Steps (Rev. 3/8/06 - Ord. 06-12)

	Level 1	Level 2	Level 3	Level 4	Level 5
Pre-application Conference ⁶	Optional	Optional	Optional	Optional	Optional
Staff Review ⁷	Required	Required	Required	Required	Required
Development Review Committee (DRC)	Not Required	Required	Required	Required	Required
Planning Commission (PC)	Not Required	Not Required	Required	Required	Not Required
Board of County Commissioners (BoCC)	Not Required	Not Required	Required ⁸	Required	Required ⁹

A. Level 1 Review- Administrative Action

All new development, redevelopment, and re-occupancy of an existing structure is subject to a Level 1 Review. This is an administrative action performed by County staff. Only the

4 Complete in conjunction with final Development Approval in Level 2.

5 Depending upon size and complexity, staff may require a preliminary plat.

6 Pre-applications are valid for no more than a year from the DRC meeting

7 When Staff Review occurs as part of a standard permitting or site plan procedure; full DRC not required.

8 BoCC only if appealed

9 BoCC Consent agenda only; No public notice required.

forms of land development listed under Section 902C are exempted from a Level 1 Review. Successful completion of Level 1 Review enables the applicant to proceed with an application for a building permit.

B. *Level 2 Review - Development Review Committee Action (Revised 2/5/2019 – Ord. 19-008; 08/21/12 – Ord. 12-027)*

All new development and modification to existing development are required to complete a Level 2 Review. This is a multi-departmental review that requires an engineered site plan. Successful completion of Level 2 Review requires approval from all parties involved in the review. Depending upon the uses within a proposed development, Level 2 Review will be followed by either a Level 1 Review, Level 5 Review, or application for a building permit in conformance with a binding site plan. The decisions of the Development Review Committee will be considered to be Administrative Decisions and are subject to appeal pursuant to Section 921.

C. *Level 3 Review- Planning Commission Action (Revised 2/5/2019 – Ord. 19-008)*

All new development and modification to existing developments involving land uses listed as C-3 conditional uses within its respective future land use district or applications for Planned Development are required to successfully complete a Level 3 Review prior to application to Level 2 Review. Level 3 Review requires recommendation from the Development Review Committee and a public hearing before the Planning Commission. At the public hearing, the Planning Commission may approve, approve with conditions, or deny an application for Level 3 Review. Successful completion of Level 3 Review will enable the applicant to proceed with Level 2 Review in accordance with conditions placed upon the application by the Planning Commission and other regulatory requirements. Appeals of the Planning Commission's decision may be heard before the Board of County Commissioners through the De Novo Hearing process outlined in Section 922.

D. *Level 4 Review- Board of County Commissioners Action*

All new development and modification to existing developments involving land uses listed as C-4 conditional uses within the respective future land use district or applications for amendment to the Future Land Use Map Series are required to undergo a Level 4 Review. This Level of Review requires recommendation from the Development Review Committee, a public hearing before the Planning Commission with a formal recommendation, and a public hearing before the Board of County Commissioners. Successful completion of Level 4 Review will enable the applicant to proceed with Level 2 Review in accordance with conditions placed upon the application by the Board of County Commissioners. Appeals of the County Commission's decision shall be by the Circuit Court of Polk County by filing an appropriate petition with the Clerk of the Court within 30 calendar days after the Board of County Commissioners' decision.

E. *Level 5- Subdivision Plats (Revised 2/5/2019 – Ord. 19-008)*

Land being subdivided according to the definitions and requirements in Chapter 8, shall be reviewed and approved according to the following procedures as summarized in Table 9.1.

DRC shall review the plat to ensure compliance with the Comprehensive Plan, this Code, and the following:

1. Pursuant to the specifications in Sections 805 and 905 (Level 2 Review), construction plans shall be reviewed by the DRC to ensure the public and private infrastructure, utilities and other improvements are compliant with all applicable codes and Appendix A, Technical Standards Manual.
2. A Final Plat shall be submitted pursuant to the specifications in Sections 806 and 908 (Level 5 Review). The review by the DRC and BoCC shall ensure the plat complies with all applicable codes, recording requirements, the approved construction plans, and security requirements.
3. Certain subdivision plats, which due to their complexity or phasing, may be required to undergo a subsequent Level 2 Review, in order to obtain necessary detail, scale and data required for a Final Development Plan.

F. *Conditional Uses (Revised 2/5/19 – Ord. 19-008)*

All Conditional Uses according to the Use Tables in Chapters 2, 4 and 5 shall comply with the prescribed conditions or performance standards outlined in Chapter 3; and prepare a Final Development Plan which shall be subject to the following levels of review seen in Table 9.1:

C-1 Conditional Uses	Level 1
C-2 Conditional Uses	Level 2
C-3 Conditional Uses	Level 3
C-4 Conditional Uses	Level 4

G. *Planned Developments*

The procedures and review requirements are summarized in Table 9.1.

1. Planned Development shall require a Level 3 Review which will be processed through the Development Review Committee and the Planning Commission. A Preliminary Plan and Impact Assessment Statement shall be required.

2. Development, redevelopment or use of land within a Planned Development which has been previously approved, shall require a Level 2 Review. A Final Development Plan pursuant to the specifications in Section 909, shall be reviewed and approved by the Development Review Committee to ensure the proposed use, structures and improvements are in compliance with the approved Planned Development Preliminary Plan and all applicable codes.
3. Minor Modifications to approved Planned Developments shall be processed as a Level 2 Review. The DRC shall review the revised Preliminary Plan to ensure it is consistent with the approved Planned Development. At the applicant's option, a Final Development Plan may be submitted for review of a Minor Modification.
4. Major Modifications to Planned Developments shall be processed as a Level 3 Review. The DRC and Planning Commission shall review the revised plan to ensure it is consistent with the approved Planned Development. At the applicant's option, a Final Development Plan may be submitted for review of a Major Modification.

H. *Non-Phosphate Mining*

The process for non-phosphate mining review and approval follows:

1. A Level 3 Review is required for non-phosphate mining and shall consist of the following:
 - a. Impact Assessment Statement;
 - b. Mine Plan; and
 - c. Reclamation Plan.
2. A Level 2 Review includes a Development Plan including a Stormwater Management Plan.
3. A Level 1 Review includes the Issuance of an Operating Permit in compliance with a Level 2 and Level 3 Review

Section 904 Level 1 Review

A. *Purpose*

A Level 1 Review is a technical review of development plans and applications for development activities that do not require a multi disciplinary review. The review is to ensure the development meets minimum standards as stated in this Code and other County regulations.

B. *Performed By*

A Level 1 Review is performed by various Polk County staff.

C. *Results*

A successful Level 1 Review will result in an issuance of an authorization to proceed with development, such as a building permit.

D. *Review Process for Level 1 Review (Revised 5/20/09 – Ord. 09-023)*

The applicant shall file a completed application and plans for Level 1 Review with the Land Development Director. Pre-application conferences are optional.

1. A copy of the application for Level 1 development review and documentation shall be delivered to the relevant staff members of the Development Review Committee. The staff shall review the proposal and submit written comments to the Director within 10 working days from the date of receipt of an application.
2. The Land Development Director or designee shall review the staff comments and determine whether the application complies with the requirements of this Code.
3. Within five working days of the receipt of the comments, the Director shall:
 - a. Issue Level 1 approval; or
 - b. Deny the application based on the failure of the development to comply with the standards of this Code.

E. *Expedited Procedure for Affordable Housing Permits (Rev. 01/30/03 - Ord. 03-14)*

In order to expedite the issuance of building permits for affordable housing developments as defined herein, the application shall be identified with yellow paper and placed ahead of other incoming applications for plan review and permit processing, Initial plan review shall be completed within ten working days.

Section 905 Level 2 Review

A. *Purpose (Revised 5/20/09 – Ord. 09-023)*

A technical review of an application and plans for a development which is:

4. Expected to have multiple technical issues or changes in the use or site;

5. To ensure conditions required by the Comprehensive Plan are compliant;
6. To evaluate whether the application meets minimum development standards and conditions as stated in this Code and other County development regulations;
7. Necessary to review by the Land Development Director for conditions as required by the Comprehensive Plan and in Chapter 3 of this Code.

B. *Performed By*

A Level 2 Review is performed by the Development Review Committee (DRC).

C. *Results*

A successful Level 2 Review will result in approval of subdivision construction plans, permitted use site plans or conditional use site plans.

D. *Review Process for Level 2 Review (Rev. 11/27/02 - Ord. 02-84)*

1. The proposal shall be placed on the agenda of the next meeting of the Development Review Committee that allows ten working days for review. A copy of the application and supporting documentation shall be delivered to each member of the Development Review Committee. The Development Review Committee members shall conduct a preliminary review of the proposal.
2. At the meeting, Development Review Committee staff will present comments (written or verbal) and determine whether the plan should be approved, approved with conditions, or denied, based on whether the plan conforms to this Code. For a development to be approved, all comments and concerns of the committee members must be addressed.
3. If the applicant or his designee fails to attend the meeting, the item shall be put on the next scheduled meeting for no more than two consecutive meetings. After failure to attend a second meeting, the applicant will be required to re-submit a new application.
4. Within five working days of the meeting the Director shall issue a written statement of approval, approval with conditions, or denial based on the failure of the proposed development to comply with the standards of this Code, and any conditions required by the Planning Commission or the BoCC.
5. If approved and released by all DRC representatives, the applicant shall submit a revised final set of plans for final approval.

6. If DRC representatives impose conditions, these conditions shall be addressed, and the applicant shall resubmit revised plans addressing the conditions within 180 days or must thereafter initiate a new application and pay all fees. The applicant may request a suspension of the application and resume the review with no major deviation to the application within one year with no additional fee.
7. If denied, a new application is required and all fees must be paid.
8. Re-submittals shall follow the procedures as set forth for an original submittal.

E. *Expedited Procedures for Affordable Housing Subdivisions (Rev. 01/30/03 - Ord. 03-14)*

In order to expedite the issuance of building permits for affordable housing developments as defined herein, the application shall be identified with yellow paper and placed ahead of the other incoming applications for plan review and permit processing. Initial plan review shall be completed within ten working days.

F. *Review process for Minor Revision to Plans (Revised 3/17/10 – Ord. 10-011)*

Where a minor revision to approved Level 2 construction plans is proposed, plans may be submitted for review by the County Engineer and Current Planning for approval or to determine whether a full DRC review is required. Revisions that are considered minor to approved Level 2 plans are listed in Section 704.C.

G. *Minor Level 2 Review/Minor Commercial Site (Revised 8/21/18 – Ord. 18-058; 3/17/10 – Ord. 10-011)*

A minor Level 2 Review/Minor Commercial Site is for any form of non-residential land development where all of the following are met:

1. The parcel or parcels of land within the developed area do not contain flood hazard areas;
2. The land development activity will not intrude or otherwise impact wetlands;
3. There are no soils removed or added to the site,
4. The proposed use is permitted by right within the Future Land Use Map district (e.g. listed as “P” in Section 205 or corresponding Selected Area Plan use table),
5. Does not occur within any public or private easement that precludes such development or activity that may result from the development,
6. Is not located within an Area of Critical State Concern;

7. The total impervious surface area of the development does not exceed 4,000 square feet or 25 percent of the parcel or parcels whichever is less.

A Minor Level 2 Review may be submitted through a shortened review by select Development Review Committee members including, but not limited to, the County Engineer, Current Planning, Transportation Engineering, Fire Marshal and Polk County Utilities for approval or to determine whether further DRC members should be included in the review. Should comments be provided requiring a resubmittal, the process as outlined in Section 905.D.6 shall apply.

Section 906 Level 3 Review

A. Purpose

The Level 3 Review is a technical and compatibility review of development applications and plans which have limited issues to be reviewed by a citizen authority in a public hearing forum, in which affected parties can provide input and feedback to the applicant and the Planning Commission (PC). The Planning Commission shall determine whether the proposed development complies with the standards of this Code and the Comprehensive Plan regarding the following issues:

1. The compatibility of non-residential uses near or adjacent to residential land uses or vacant land designated as residential;
2. The compatibility of proposed residential uses in proximity to existing residential densities of a significantly different density;
3. Where there are specific characteristics of the proposal which may result in potential adverse off-site impacts. Site characteristics such as a dumpster, driveway, drive-through window, or buffer will be reviewed to determine compatibility and possible mitigation of impacts not deemed compatible;
4. The effects of noise, vibration, air pollution, glare and odor may adversely impact the use of adjacent properties shall be reviewed, and if such effects can be mitigated and conditions for mitigation imposed;
5. Whether the requested development meets minimum development standards as stated in this Code, and other County development regulations; and
6. A development plan which mitigates impacts as outlined in an Impact Assessment Statement which has been prepared pursuant to Section 910.

B. *Performed By*

A Level 3 Review is performed by the Development Review Committee and Planning Commission (PC). The DRC and the Planning Commission may approve, deny or approve with conditions.

C. *Results*

A successful Level 3 Review will result in an approval, or approval with conditions, or an affirmative recommendation of the plans presented.

D. *Review Process for Level 3 Review (Rev.2/5/19 – Ord. 19-008; 5/20/09 – Ord. 09-023; 3/8/06 - Ord. 06-12)*

1. A pre-application meeting is optional, but recommended.
2. Applications for development review shall be available from the Land Development Division. A complete application shall be signed by all owners, or their agent, of the property subject to the proposal, and notarized. Signatures by other parties will be accepted only with notarized proof of authorization by the owners. In a case of corporate ownership, the application shall be signed by an officer of the corporation. All applications shall comply with the following submittal requirements and additional submittal requirements that may be required by other Sections of this Code or by resolution adopted by the Polk County Board of County Commissioners.
 - a. Applications shall include documents and drawings showing:
 - i. Name of owner or contact, address, and phone number;
 - ii. Description of intended use and Land Use District;
 - iii. Preliminary Development Plan;
 - iv. Location and linear dimensions and size of parcel;
 - v. Legal description of property involved;
 - vi. Access;
 - vii. Boundary survey or scaled drawing as required by this Code; and,
 - viii. Tax parcel sheets and aerial photos.
 - b. There may be additional submittal requirements in other Sections of this Code. All plans submitted for review by the County and other review

agencies shall be identical. Any revisions made at the request of one or more review agencies shall be resubmitted with the request number of copies.

- c. All preliminary plans shall include the following information:
- i. Location of the subject property in relation to surrounding and adjacent roadways and proposed access to the property street network;
 - ii. General description of the project, illustrating the location of all proposed uses. Residential projects shall include the total number of units proposed and density. Non-residential projects shall include the floor area ratio (FAR) and impervious surface ratio (ISR);
 - iii. Location and type of developments, land uses, and driveways or roads within 150 feet of the proposed project;
 - iv. A drawing of the site (at a scale of one inch equals 60 feet) showing major geographical features including creeks, ditches, water bodies, other prominent topographic features (USGS, or tax maps may be used);
 - v. Location of major tree stands and other large trees (this may be outlined on aerial maps, and need not be a tree survey);
 - vi. Location, size and number of stories of proposed building and above ground transmission structures;
 - vii. General parking lot layout with approximate number of spaces, basic traffic flow and proposed circulation patterns;
 - viii. A statement indicating whether access will be required to a state, city, county or private road;
 - ix. Generalized location of intended buffers;
 - x. Proposed foot print of non-residential building indicating building setbacks and access points;
 - xi. Typical and minimum lot size on residential projects;
 - xii. A map identifying the location and elevation of any flood zones, wetlands and other Development Limitation or Resource Protection Areas;

- xiii. A general description of how drainage will be handled, including a soils statement (Natural Resources Conservation Service acceptable) and the general area of the site to be used for stormwater management facilities;
 - xiv. Any special occupancies to be included on the site, which may include but are not limited to, underground storage tanks, a fireworks manufacturing site, a paint and body shop; or any other occupancy that includes a fire safety concern;
 - xv. Existing water and waste water services; (this may simply be a statement such as: "There are no water or wastewater service facilities on or near the site@);
 - xvi. The gross floor area per floor of the building proposed;
 - xvii. The proposed use as listed in the appropriate use tables in Chapters 2, 3, and 4; and,
 - xviii. Current Property Appraiser parcel maps and aerials for the site.
3. The Land Development Director shall send a copy of the application to each member of the Development Review Committee and shall place the request on the agenda of the next Committee meeting allowing for a minimum 15 working days for review.
 4. The County shall provide notice of the request according to the requirements of Section 960.
 5. Each committee member shall submit written comments as to the probable effect of the proposed development on the public facilities and services and the compliance or lack thereof with this Code and the Comprehensive Plan.
 6. Within ten working days after the committee meets to consider the plan and comments, the Land Development Director shall prepare a written report setting forth DRC findings and conclusions supporting its recommendation to the Planning Commission. The written report shall:
 - a. Recommend approval or approval with conditions of the application as consistent with this Code; or
 - b. Recommend denial of the application based upon its failure to comply with the requirements of this Code.
 7. The Planning Commission shall make findings regarding the factors outlined in Section 959 and render a final decision for approval, approval with conditions, or

denial of the development application. The Planning Commission, in the review of development plans, shall consider the following factors:

- a. Whether the proposed development is consistent with all relevant requirements of this Code;
 - b. Whether the proposed development is consistent with all applicable policies of the Comprehensive Plan;
 - c. Whether the proposed use is compatible with surrounding uses and the general character of the area, including such factors as density, height, bulk, scale, intensity, traffic, noise, and appearance; and
 - d. How the concurrency requirements will be met, if the development were built.
8. The Planning Commission may consider conditions and safeguards in conformity with the intent and provisions of this Section, including the following:
- a. Limit the manner and extent to which an activity is conducted to minimize environmental effects such as: noise, vibration, air pollution, glare, and odor;
 - b. Limit the height, size, or location of a building or other structure (including signs) to minimize incompatibilities between a proposed development and surrounding uses;
 - c. Designate the size, number, and location of vehicle access points to minimize hazards for vehicular or bicycle/pedestrian traffic and to minimize congestion on public roads;
 - d. Prescribe the location of on-site facilities such as parking areas, loading areas, driveways, drive-thru windows, and trash collection areas to minimize adverse impacts on adjacent properties;
 - e. Limit the location and intensity of outdoor lighting, including sign lighting, or require its shielding to protect adjacent or nearby property and public roadways from glare;
 - f. Require berming, screening, or landscaping to lessen visual and sound impacts which may adversely affect adjacent or nearby property; and
 - g. Specify other conditions in conformity with the intent and purpose of this Code and the Comprehensive Plan.

9. When part of a Planned Development or Conditional Use Review (Level 3 Review), the Planning Commission is also authorized to review, hear, and act upon variances and expansions of non-conforming uses as they relate to that proposal.
 10. Any applicant or substantially affected property owner who is dissatisfied with a decision of the Planning Commission may request a full hearing before the Board of County Commissioners by filing an application for a De Novo hearing with the Land Development Division pursuant to Section 922.
- E. *Minor Modification to Level 3 Approval (Rev. 6/4/19 – Ord. 19-040; 2/5/19 – Ord. 19-008; 12/08/03 Ord. 03-69; Rev. 7/29/02 - Ord. 02-52)***

The following changes may be reviewed as minor modifications to approved conditional uses:

1. Changes in size and form of a structure will only be considered a major modification to the binding site plan if they occur within 50 feet of the boundary of the conditional use or within 50 feet of any part of the conditional use which has been constructed or sold to any owner or owners different from the applicant requesting the change;
2. Any reduction in the amount of open space of less than five percent or any non-substantial change in the location or characteristics of open space;
3. Non-substantial changes in location or type of pedestrian or vehicular accesses or circulation, which will not affect adjacent properties, functionality of the system or interconnections;
4. Any increase in intensity of non-residential uses for a portion of the project which is further than 100 feet from the conditional use boundaries or any part of the project which has been constructed or sold to an owner or owners different from the applicant requesting the change;
5. An increase in residential density which results from an increase in the total number of lots by less than two percent (2%) of the total number of approved lots within a project or project phase, or two (2) lots within a project whichever is greater provided the increase is due to more precise engineering via a Level 2 Review application and there is no change to the minimum lot size or setbacks;
6. Any decrease in intensity or density, as long as the intensity or density was not a condition, requirement, or basis for approval;
7. An increase in structure height less than eight feet, provided there is no increase in the number of stories;

8. Any changes in the phasing schedule which do not impact timing, amount, or completion of improvements; or the satisfaction of any specific conditions;
9. Any increase in gross floor area of less than or equal to five percent of the gross floor area for the project; and,
10. Subsequent to development, changes to dimensional requirements on residential lots may be processed as variances pursuant to Section 930.

F. *Major Modification to Level 3 Approval*

Major modifications to an approved conditional use other than those outlined in Subsection E.1-10 shall be reviewed pursuant to Section 906, Level 3 Review.

G. *Timing of Approval (Revised 08/07/18 – Ord. 18-056; 12/17/13 – Ord. 13-067; Added 06/17/09 Ord. 09-025)*

1. All Level 3 Review approvals are valid for a period not exceeding three years from the date of approval, with exception to residential and Residentially Based Mixed-Use Planned Developments approved after August 7, 2018, which shall not expire unless otherwise limited. The Planning Commission or Board of County Commissioners may limit or expand through a condition of approval the timing of approval for all types of Level 3 Reviews. Level 2 Review plans shall be submitted within three years from the date of approval or within the approval time frame as outlined in the conditions of approval; otherwise the approval shall be null and void. If a residential or Residentially Based Mixed-Use Planned Development does not have an expiration date by way of condition of approval then Level 2 Review plans may be submitted at any time. If Level 2 Review plans are submitted within the time frames outlined herein then the other provisions of this Code govern the effectuation of the project. All Level 2 Review plans shall comply with the current Land Development Code requirements except for permitted uses, density, and intensity that were appurtenant to the Level 3 Review approval. All conditions of approval of the Level 3 Review shall remain in full force and effect.
2. After Level 3 Review approval, an applicant may apply for one additional time extension. Said time extension shall be for a maximum of one year, shall be reviewed by the DRC and shall not constitute a major modification. The DRC shall only review the project for the appropriateness of granting the requested time extension. Applications for time extension as identified in this section shall be submitted prior to the expiration of the Level 3 Review. If an application for time extension has been submitted prior to expiration of the Level 3 Review approval but has not been acted upon by the DRC prior to the date of expiration, the request for extension shall still be considered by the DRC and the project shall not expire until the DRC renders a final decision either approving or denying the request. However, in no instance may a time extension be granted by the DRC for a period

to exceed one year from the date of the original Level 3 Review approval, regardless of when the DRC acts upon an application for a time extension. Decisions hereunder by the DRC may be appealed pursuant to Section 918.B and Section 921 of the Code.

3. Polk County acknowledges and will comply with any mandate enacted into law by the Florida Legislature that extends the duration of development order approvals such as Level 3 Review and Level 2 Review plans. However, failure to commence construction prior to the extended expiration date shall result in the approval being null and void.
4. An applicant may apply for additional time extensions through the major modification process before the Planning Commission for a project which has been granted a time extension or extensions pursuant to section 906.G.2 and/or 906.G.3. An application for a time extension in that circumstance must be submitted prior to the project's Level 3 Review approval expiration. If an application for time extension has been submitted prior to expiration of the Level 3 Review approval but has not been acted upon prior to the date of expiration, the request for extension shall still be considered by the Planning Commission, or in the case of a de novo appeal the Board of County Commissioners, and the project shall not expire until the appropriate body renders a final decision either approving or denying the request.

H. *Permitted (P) and Conditional (C1) and Conditional (C2) Uses*

A Level 3 Review approval does not divest the subject property from any use labeled Permitted (P) and Conditional (C1) or Conditional (C2) per the applicable Use Table. A Major Modification is not required for uses labeled P, C1 or C2, unless otherwise prohibited in the Level 3 Review approval. The use that is the subject of the Level 3 Review approval shall still comply with Section 906.E. Uses listed as a P, C1, or C2 in the appropriate use table shall not be bound by Section 906.E.

If a Level 3 Review limits the density or unit count, or alters the setbacks, through the binding site plan or a Condition of Approval, then the density or unit count cannot be increased by right. The density or unit count can only be increased through a major modification.

Section 907 Level 4 Review

A. *Purpose*

The review is to evaluate whether the requested development meets minimum development standards as stated within this Code, other County development regulations, and to provide for compatibility review. The Planning Commission shall recommend and the BoCC may

approve, approve with conditions, or deny the application. The BoCC shall determine whether the proposed development complies with the standards of this Code and the Comprehensive Plan regarding the following issues:

1. The compatibility of non-residential uses near or adjacent to residential land uses or vacant land designated as residential;
2. The compatibility of proposed residential uses in proximity to existing residential densities of a significantly different density;
3. Where there are specific characteristics of the proposal which may result in potential adverse off-site impacts. Site characteristics such as a dumpster, driveway, drive-through window, or buffer will be reviewed to determine compatibility and possible mitigation of impacts not deemed compatible;
4. The effects of noise, vibration, air pollution, glare and odor may adversely impact the use of adjacent properties shall be reviewed and, where appropriate, conditions for mitigation imposed;
5. Whether the requested development meets minimum development standards as stated in this Code, and other County development regulations; and to provide for compatibility; and
6. The development plan and impacts are outlined in an Impact Assessment Statement which mitigates any impacts of the project and is prepared pursuant to Section 910.

B. *Performed By (Revised 02/05/19 – Ord. No. 19-008)*

A Level 4 Review is performed by the Development Review Committee, the Planning Commission, and the Board of County Commissioners.

C. *Results*

A successful Level 4 Review will result in a recommendation of approval, or approval with conditions from the Planning Commission and approval or approval with conditions by the Board of County Commissioners.

D. *Review Process For Level 4 Review (Rev. 02/05/19 – Ord. No. 19-008; 5/20/09 – Ord. 09-023; 3/8/06 - Ord. 06-12)*

1. A pre-application meeting is optional, but recommended.
2. Submit an application consistent with the requirements of Section 906D.2.

3. The Land Development Director shall send a copy of the application to each member of the Development Review Committee and shall place the plan on the agenda of the next Committee meeting that allows for 15 working days for review.
4. Each Committee member shall submit written comments as to the proposed development's probable effect on public facilities and services and whether the proposal is in compliance with the Comprehensive Plan and this Code. If required to mitigate the impacts of a proposed conditional use, DRC members shall provide written conditions for Planning Commission consideration.
5. Within ten working days after the Committee meets to consider the plan and comments, the Director shall prepare a written report and recommendation that the development application be approved, approved with conditions, or denied.
6. On the earliest available date that allows the giving of notice required by Section 960, the Land Development Director shall schedule a public hearing on the application before the Planning Commission.
7. The Planning Commission shall review the development application and recommend approval, denial, or approval with conditions in accordance with a Level 3 Review process.
8. Within ten working days after the Planning Commission meets to consider the plan and comments, the Land Development Director shall prepare a written report including the Planning Commission recommendation and conditions.
9. On the earliest available date that allows the giving of notice required by Section 960, the Land Development Director shall schedule a Board of County Commissioners public hearing on the development plan and application.
10. The Board of County Commissioners, in the review of the development application shall consider the following factors:
 - a. Whether the proposed development is consistent with all relevant requirements of this Code;
 - b. Whether the proposed development is consistent with all applicable policies of the Comprehensive Plan;
 - c. Whether the proposed use is compatible with surrounding uses and the general character of the area, including such factors as density, height, bulk, scale, intensity, traffic, and noise appearance; and
 - d. Any other matter which the BoCC may deem appropriate and relevant to the specific development proposal.

11. The BoCC may prescribe appropriate conditions and safeguards in conformity with the intent and provisions of this Section, including the following:
 - a. Limit the manner and extent to which an activity is conducted to minimize such environmental effects as noise, vibration, air pollution, glare, and odor;
 - b. Limit the height, size, or location of a building or other structure (including signs) to minimize incompatibilities between a proposed development and surrounding uses;
 - c. Designate the size, number and location of vehicle access points to minimize hazards for vehicular or bicycle/pedestrian traffic and to minimize congestion on public roads;
 - d. Limit the location of on-site uses such as parking areas, loading areas, drive-thru windows, and trash collection areas to minimize adverse impacts on adjacent properties;
 - e. Limit the location and intensity of outdoor lighting, including sign lighting, or require its shielding to protect adjacent or nearby properties and public roadways from glare;
 - f. Require berming, screening, or landscaping to lessen visual and sound impacts which may adversely affect adjacent or nearby property; and
 - g. Specify other conditions in conformity with the intent and purpose of this Code and the Comprehensive Plan.

12. The BoCC shall consider the factors listed in Section 907D.10 and 907D.11, and render a final decision to approve, approve with conditions, or deny the development application. Within five working days the County shall issue a letter outlining the decision and required conditions. If the Board denies a development application, then pursuant to Section 125.022, F.S., the Board shall adopt a written order stating the legal basis for the denial within 30 days of the hearing. The Board may adopt the staff report as its written order if it desires in lieu of a separate order, including any adopted modifications to the staff report, if the staff report recommended denial by the DRC.

E. *Modification to Level 4 Approval*

Modifications to Level 4 conditional uses shall be consistent with the criteria set forth for Level 3 conditional use modifications. However, major modifications to uses requiring Level 4 approval shall follow the Level 4 approval procedures.

F. *Timing of Approval (Revised 08/07/18 – Ord. 18-056; 12/17/13 – Ord. 13-067; Added 06/17/09 – Ord. 09-025)*

1. All Level 4 Review approvals are valid for a period not exceeding three years from the date of approval, with exception to residential and Residentially Based Mixed-Use Planned Developments approved after August 7, 2018, which shall not expire unless otherwise limited. The Board of County Commissioners may limit or expand through a condition of approval the timing of approval for all types of Level 4 Reviews. Level 2 Review plans shall be submitted within three years from the date of approval or within the approval time frame as outlined in the conditions of approval; otherwise the approval shall be null and void. If a residential or Residentially Based Mixed-Use Planned Development does not have an expiration date by way of condition of approval then Level 2 Review plans may be submitted at any time. If Level 2 Review plans are submitted within the time frames outlined herein then the other provisions of this Code govern the effectuation of the project. All Level 2 Review plans shall comply with the current Land Development Code requirements except for permitted uses, density, and intensity that were appurtenant to the Level 3 Review approval. All conditions of approval of the Level 3 Review shall remain in full force and effect.
2. After Level 4 Review approval, an applicant may apply for one additional time extension. Said time extension shall be for a maximum of one year, shall be reviewed by the DRC and shall not constitute a major modification. The DRC shall only review the project for the appropriateness of granting the requested time extension. Applications for time extension as identified in this section shall be submitted prior to the expiration of the Level 4 Review. If an application for time extension has been submitted prior to expiration of the Level 4 Review approval but has not been acted upon by the DRC prior to the date of expiration, the request for extension shall still be considered by the DRC and the project shall not expire until the DRC renders a final decision either approving or denying the request. However, in no instance may a time extension be granted by the DRC for a period to exceed one year from the date of the original Level 4 Review approval, regardless of when the DRC acts upon an application for a time extension. Decisions hereunder by the DRC may be appealed pursuant to Section 918.B and Section 921 of the Code.
3. Polk County acknowledges and will comply with any mandate enacted into law by the Florida Legislature that extends the duration of development order approvals such as Level 4 Review, Level 3 Review and Level 2 Review plans. However, failure to commence construction prior to the extended expiration date shall result in the approval being null and void.
4. An applicant may apply for additional time extensions through the major modification process before the Board of County Commissioners for a project which has been granted a time extension or extensions pursuant to section 907.F.2 and/or 907.F.3. An application for a time extension in that circumstance must be

submitted prior to the project's Level 4 Review approval expiration. If an application for time extension has been submitted prior to expiration of the Level 4 Review approval but has not been acted upon prior to the date of expiration, the request for extension shall still be considered by the Board of County Commissioners, and the project shall not expire until the Board renders a final decision either approving or denying the request.

G. *Permitted (P) and Conditional (C1) and Conditional (C2) Uses (Added 12/17/13 – Ord. 13-067)*

A Level 4 Review approval does not divest the subject property from any use labeled Permitted (P) and Conditional (C1) or Conditional (C2) per the applicable Use Table. A Major Modification is not required for uses labeled P, C1 or C2, unless otherwise prohibited in the Level 4 Review approval. The use that is the subject of the Level 4 Review approval shall still comply with Section 906.E. Uses listed as a P, C1, or C2 in the appropriate use table shall not be bound by Section 906.E.

If a Level 4 Review limits the density or unit count, or alters the setbacks, through the binding site plan or a Condition of Approval, then the density or unit count cannot be increased by right. The density or unit count can only be increased through a major modification.

Section 908 Level 5 Review

A. *Purpose*

The review is to evaluate whether the requested subdivision meets minimum development standards as stated within this Code, other County development regulations, and to provide for compatibility review. The BoCC may approve, approve with conditions, or deny.

B. *Performed By (Revised 3-17-10 – Ord. 10-010)*

A Level 5 Review is performed by the Development Review Committee (DRC) and/or plat Review Staff and the Board of County Commissioners (BoCC) for review of the plat or plans submitted.

C. *Results*

A successful Level 5 Review will result in approval of a subdivision plat by the Board of County Commissioners.

D. *Review Process For Level 5 Review (Rev. 08-07-18 – Ord. 18-057; 3-17-10 – Ord. 10-010; 5/20/09 – Ord. 09-023; 01/30/03 - Ord. 03-14)*

1. For the plat the Land Development Director shall send a copy of the application to each member of the Development Review Committee and shall allow 15 working days for review.
2. Within five working days after the Committee meets to consider the plan and comments or the plat is released, the Director shall prepare a written report and recommendation that the development application be approved, denied or approved with conditions.
3. If DRC representatives impose conditions, these conditions shall be addressed, and the applicant shall resubmit the revised plat addressing the conditions within 180 days or must thereafter initiate a new application and pay all fees. The applicant may request a suspension of the application and resume the review with no major deviation to the application within one year with no additional fee.
4. On the earliest available date the Land Development Director shall schedule the application on the Board of County Commissioners' consent agenda.
5. The Board of County Commissioners, in the review of the development application, shall consider the following factors:
 - a. Whether the proposed development is consistent with all relevant requirements of this Code;
 - b. Whether the proposed development is consistent with all applicable policies of the Comprehensive Plan;
 - c. Whether the proposed use is compatible with surrounding uses and the general character of the area, including such factors as height, bulk, scale, intensity, traffic, noise, and appearance; and
 - d. Any other matter which the BoCC may deem appropriate and relevant to the specific development proposal.
6. The BoCC shall consider the factors listed in Section 908D.6, and render a final decision to approve or deny the development application. Within five working days the County shall issue a letter outlining the decision.

E. *Expedited Procedures for Affordable Housing Subdivisions (Rev. 01/30/03 - Ord. 03-14)*

In order to expedite the issuance of building permits for affordable housing developments as defined herein, the application shall be identified with yellow paper and placed ahead of the other incoming applications for plan review and permit processing. Initial plan review shall be completed within ten working days.

Section 909 Reserved

Section 910 Impact Assessment Statements

The purpose of an Impact Assessment Statement is to provide information on the effects a proposed development or land use action will have on the existing neighborhood and general area; on the transportation facilities; on the environment and natural resources of the County; on the public facilities for water, sewer, solid waste disposal, fire, police, public education, parks, recreation, and other utilities; and any other aspect with an identified impact of the development and deemed appropriate for concern.

A. *Land and Neighborhood Characteristics*

To assess the compatibility of the requested land use district with the adjacent property and to evaluate the suitability of the site for development, the applicant shall:

1. Show how and why is the site suitable for the proposed uses;
2. Provide a site plan showing each type of existing and proposed land use;
3. Describe any incompatibility and special efforts needed to minimize the differences in the proposed use with adjacent uses;
4. Explain how the requested district may influence future development patterns if the proposed change is located in an area presently undeveloped; and
5. Describe each of the uses proposed in a Planned Development and identify the following:
 - a. The density and types of residential dwelling units;
 - b. The type of commercial and industrial uses;
 - c. The approximate customer service area for commercial uses; and
 - d. The total area proposed for each type of use, including open space and recreation.

B. *Access to Roads and Highways*

To assess the impact of the proposed development on the existing, planned and programmed road system, the applicant shall:

1. Calculate the number of vehicle trips to be generated daily and at PM peak hour based on the latest ITE or provide a detailed methodology and calculations;
2. Indicate what modifications to the present transportation system will be required as a result of the proposed development;
3. List the total number of parking spaces and describe the type of parking facilities to be provided in the proposed development;
4. Indicate the proposed methods of access to the existing public roads (e.g., direct frontage, intersecting streets, frontage roads); and
5. Indicate the modes of transportation, other than the automobile, that have been considered (e.g., pedestrian, bicycle, bus, train or air) and describe the modes.

C. *Sewage*

To determine the impact caused by sewage generated from the proposed development, the applicant shall:

1. Calculate the amount of sewage in gallons per day (GPD) expected to be generated by the proposed development;
2. Describe the proposed method and level of treatment, and the method of effluent disposal for the proposed sewage treatment facilities if on-site treatment is proposed;
3. Indicate the relationship of the proposed sewage system to Polk County's plans and policies for sewage treatment systems;
4. Identify the service provider; and
5. Indicate the current provider's capacity and anticipated date of connection.

D. *Water Supply*

To determine the amount of water to be used, how it will be distributed, and the impact on the surrounding area, the applicant shall:

6. Indicate the proposed source of water supply and, the type of treatment;

7. Identify the service provider;
8. Calculate the estimated volume of consumption in gallons per day (GPD); and
9. Indicate the current provider's capacity and anticipated date of connection.

E. *Surface Water Management and Drainage*

To determine the impact of drainage on the groundwater and surface water quality and quantity caused by the proposed development, the applicant shall:

1. Discuss the impact the proposed development will have on surface water quality;
2. Describe the alteration to the sites natural drainage features, including wetland, that would be necessary to develop the project;
3. Describe the impact of such alterations on the fish and wildlife resources of the site; and
4. Describe local aquifer recharge and groundwater conditions and discuss the changes to these water supplies which would result from development of the site.

F. *Population*

To determine the impact of the proposed developments additional population, the applicant shall:

1. Calculate the projected resident (and transient) population of the proposed development and the generated population in the case of commercial or industrial uses;
2. Describe, for commercial and industrial projects, the employment characteristics including the anticipated number of employees, type of skills or training required for the new jobs, the percentage of employees that will be found locally or are expected to be drawn from outside the county or state, and the number of shifts per day and employees per shift;
3. Indicate the expected demographic composition of the additional population (age/socio-economic factors); and
4. Describe the proposed service area and the current population thereof.

G. General Information

To determine if any special needs or problems will be created by the proposed development, the applicant shall:

1. List and discuss special features of the proposed development that promote desirability and contribute to neighborhood needs; and
2. Discuss the demand on the provision for the following services:
 - a. Parks and Recreation;
 - b. Educational Facilities (preschool/elementary/middle school/high school);
 - c. Health Care (emergency/hospital);
 - d. Fire Protection;
 - e. Police Protection and Security; and
 - f. Electrical Power Supply

H. Maps

1. Maps shall be used to give the public agencies a clear graphic illustration and visual understanding of the proposed development and the potential positive and negative impacts resulting from the development.
2. Maps shall be of sufficient type, size, and scale to facilitate complete understanding of the elements of the proposed development. Scales shall be clearly indicated on each map and the dates of preparation and revisions shall be included. The project boundaries shall be overlaid on all maps. The following maps shall accompany all Impact Assessment Statements:
 - a. Map A: A location map showing the relationship of the development to cities, highways, and natural features;
 - b. Map B: A Topographical Map with contour intervals of no greater than five feet, the identification of the property boundaries, and a delineation of the areas of special flood hazard (100 year flood plain) as shown on the Flood Insurance Rate Maps issued by the Federal Emergency Management Agency (FEMA) for Polk County;
 - c. Map C: A Land Use and Land Use District Map showing the existing land use designations and districts on and abutting the proposed development, including lot sizes and density;

- d. Map D: A Soils Map with soils designated according to Natural Resources Conservation Service classifications. If available, USDA Natural Resources Conservation Service (NRCS) soil surveys are preferable;
- e. Map E: A Traffic Circulation Map identifying any existing roads on or adjacent to the proposed development and indicating the name of the roads, maintenance jurisdiction, and pavement and right-of-way widths.
- f. Map F: A Site Plan showing land uses, the layout of lots, the type and maximum density for each type of residential area; the typical minimum lot sizes and dimensions for each use and unit type, and the dimensions, locations, and types of buffers, easements, open space areas, parking and loading areas, setbacks, and vehicular circulation routes; and
- g. Map G: A Drainage Map delineating existing and proposed drainage areas, water retention areas, drainage structures, drainage easements, canals, wetlands, watercourses, and other major drainage features.

Section 911 Operating Permits

A. *Applicability*

Operating Permits and annual renewals of such permits shall be required for non-phosphate mining, mobile home parks, recreational vehicle parks, and salvage yards.

B. *Operating Permits*

Prior to establishing or operating a non-phosphate mine, mobile home park, recreational vehicle park, or salvage yard, the operator shall obtain an Operating Permit from the County in accordance with the following:

1. An initial application for an Operating Permit shall be required to undergo a Level 2 Review. Initial applications shall include;
 - a. the name, address, and phone number of the operator;
 - b. a complete set of final as-built plans for the development including site, infrastructure and structures on-site; and,
 - c. any supplemental data required in Chapter 3 for the specific use.
2. A valid Operating Permit shall be prominently displayed in the office of the firm and shall be renewed on an annual basis. Operating permit renewals shall undergo

a Level 1 Review. The Codes Enforcement Division may require additional information, as necessary, for the renewal of the permit.

3. In the event of sale or transfer of ownership, an operating permit may be re-issued to the new operator, under the same conditions, requirements, and agreements as were applicable to the previous owner, at the time of the sale. Application for the re-issuance of an annual operating permit may be made prior to the sale or filed within ten days after the closing date of the sale. Failure to comply with this Section shall cause a current operating permit to become invalid.

Section 912 Code Amendments, Land Use District Modifications and Comprehensive Plan Amendments

A. *State Law*

The procedures in this Section shall be followed in amending this Code and the Comprehensive Plan. This part supplements the mandatory requirements of Florida law, which must be adhered to in all respects.

B. *Application*

Any property owner, BoCC, or agency may apply to the Department to amend the text of this Code, the text of the Comprehensive Plan or the Future Land Use Map Series (FLUMS) in compliance with procedures prescribed by the Department.

C. *Planning Commission*

The Planning Commission shall hold a public hearing on each application to amend this Code, the FLUMS, or the Comprehensive Plan and thereafter submit to the Board of County Commissioners a written recommendation which:

1. Identifies the provisions of the Code, Comprehensive Plan, or FLUMS, proposed to be changed and describes how the proposal relates to each; and
2. States factual and policy considerations supporting the recommendation.

D. *Board of County Commission*

The Board of County Commissioners shall hold a public hearing on the proposed amendment and may enact or reject the proposal, or enact a modified proposal that is within the scope of matters considered in the hearing.

E. *Hearing*

Each public hearing shall conform to the following requirements:

1. Public notice that complies with the requirements of state law and Section 960 shall be given.
2. The public hearing shall at a minimum:
 - a. Comply with the requirements of Florida law;
 - b. Present the Department's analysis of the proposed decision;
 - c. Present the Department's summary of reports by other agencies; and
 - d. Permit any person to make recommendations and comments before or during the hearing.

F. *Public Notice*

Public notice of Code Amendments, Land Use District Modifications and Comprehensive Plan Amendments shall be given pursuant to Section 960.

Section 913 Fee Refund Requests and Withdrawal of Applications

A. *Level 1 Review*

A Fee Refund Request for a Level 1 Review shall be in accordance with following:

1. Requests for refunds of permit fees on building, electrical, plumbing, mechanical or mobile home setup permits may be recommended for processing by the Director of the Department for reasonable cause provided:
 - a. The cause for not using the permit is received in writing by the Department within 60 days of the date of issuance of the permit along with the original permit receipt and the permit posting card;
 - b. Construction has not begun or the mobile home has not been placed on the property; and
 - c. No request for inspections has been made.
2. The first 25 percent of the fee is not refundable.
3. Fees on the following permits are not refundable:

- a. Demolition;
- b. Moving;
- c. Storage of mobile home;
- d. Mobile home park permit and use space permit;
- e. Any permit issued as a result of a violation;
- f. Temporary power pole; and
- g. Permit for temporary structure.

B. *Level 2 Review (Revised 5/20/09 – Ord. 09-023)*

A Fee Refund Request for a Level 2 Review shall be submitted in writing to the Land Development Division with the payment receipt or other evidence of payment by the applicant. Fee Refund Requests received two weeks from the receipt of the Level 2 Review request are entitled to a full refund of the fees paid. Fee Refund Requests received after two weeks but prior to issuance of any final approval are entitled to a 25 percent refund. After the issuance of any Level 2 Review approval no refund shall be made.

C. *Level 3 and Level 4 Reviews (Revised 5/20/09 – Ord. 09-023)*

A Fee Refund Request for Level 3 and Level 4 Reviews shall be submitted in writing to the Land Development Division with the payment receipt or other evidence of payment by the applicant. Fee Refund Requests received up to two weeks prior to the deadline for filing the request are entitled to a full refund of the fees paid. Fee Refund Requests received within two weeks of the filing deadline but prior to advertising are entitled to a 25 percent refund. Fee Refund Requests received after advertising for public notice shall not be entitled to any refund.

D. *Level 5 Review (Revised 5/20/09 – Ord. 09-023)*

A Fee Refund Request for a Level 5 Review shall be submitted in writing to the Land Development Division with the payment receipt or other evidence of payment by the applicant. Fee Refund Requests received two weeks from the receipt of the Level 5 Review request are entitled to a full refund of the fees paid. Fee Refund Requests received after two weeks but prior to issuance of any final approval are entitled to a 25 percent refund. After the issuance of any Level 5 Review approval no refund shall be made.

Section 914 Transfer of Development Rights

A. *Purpose and Authority*

It is the purpose of this Section to establish procedures for the transfer of allocated development rights in the County in order to promote redevelopment of the district in a manner which minimizes the impacts of such transfers and protects the interests of all property owners and residents of the County.

B. *Allocated Development Rights are Freely Transferable*

Any development right which is appurtenant to a parcel of land in the County by the operation of this Code which has not been developed may be transferred to any person at any time, to the same extent and in the same manner as any other interest in real property. The transfer shall be in the form of a special warranty deed which shall specify the amount of transferable development rights which are being conveyed or sold and the real property from which the rights are transferred. The special warranty deed shall contain a covenant restricting in perpetuity the use of the parcel from which the rights have been transferred.

C. *Use of Transferred Development Rights (Revised 5/20/09 – Ord. 09-023)*

1. Any development right which has been transferred may be used in the development of another parcel of land in the County if approved by the Development Review Committee (DRC) as a Level 2 Review.
2. The use of transferable development rights shall not authorize uses not otherwise permitted in the County.
3. No development right may be transferred to a land use district with a lower permitted density of use than the district from which the rights are transferred, except that density averaging is permitted within residential land use districts. The entire area under consideration must be considered as one project and the total dwelling unit count shall not exceed what is otherwise allowed under the Future Land Use District for the area under consideration.
4. No development right may be transferred to a parcel of land which is located more than one mile from the parcel from which the rights are transferred.
5. Development rights may be converted from one use to another on the basis of trip generation rates established by the most recent edition of the Institute of Transportation Engineers Trip Generation Manual consistent with the land use.
6. An affidavit of ownership shall be filed with the Land Development Division at least 30 days prior to the submission of an application for development approval

that involves the use of a transferred development right. Such an affidavit shall contain:

- a. Evidence of recording of the special warranty deed conveying the development rights or if the applicant has entered in an option agreement for the transfer of development rights, a statement that the deed of transfer will be recorded in the event that the application is approved prior to the issuance of a building permit;
 - b. A statement that the development rights reflected in the instrument of conveyance have not been conveyed to any person other than the applicant or his predecessor in title; and
 - c. A statement that the development rights have not been previously used or exercised by any person on the parcel of land from which the development rights have been transferred or any other parcel of land.
7. The Land Development Director shall keep a record of such transfers and report them annually to the Planning Commission and Board of County Commissioners.

Section 915 Development Agreements

A. *Purpose and Intent*

It is the intent of this Section to encourage a stronger commitment to comprehensive and capital facilities planning, ensure the provision of adequate public facilities for development, encourage the efficient use of resources, and reduce the economic cost of development, all in conformity with and to carry out the purposes of the Polk County Comprehensive Plan and the Local Government Comprehensive Planning and Land Development Regulation Act.

B. *Authority*

This intent is affected by exercising the authority granted the County to enter into Development Agreements with applicants under Sections 163.3220 through 163.3243, F.S. This Section shall be regarded as supplemental and additional to the powers conferred upon the County by other laws and shall not be regarded as derogation of any powers now existing.

C. *Definitions*

The definitions set forth in Section 163.3221 of the Local Government Comprehensive Planning and Land Development Regulation Act are incorporated by reference for the purposes of this Section as fully set forth herein.

D. *Findings of Fact*

As part of the Development Agreement, the Polk County Board of County Commissioners shall make findings of fact declaring:

1. The lack of certainty in the approval of development can result in a waste of economic and land resources, discourage sound capital improvement planning and financing, escalate the cost of housing and development, and discourage commitment to comprehensive planning.
2. The assurance to an applicant that upon receipt of his development permit he may proceed in accordance with existing laws and policies, subject to the conditions of a Development Agreement, strengthens the public planning process, encourages sound capital improvement planning and financing, assists in assuring there are adequate capital facilities for the development, encourages private participation in comprehensive planning, and reduces the economic costs of development.

E. *Application for Development Agreement*

1. Applications for Development Agreements shall be submitted to the County on forms provided by the County. The County may require an applicant to submit such information as the County considers necessary to process the application. Each application shall be accompanied by the Development Agreement proposed by the applicant. The Board of County Commissioners may establish, and amend from time to time, by resolution, a schedule of fees listing the charges imposed for the filing and processing of each application.
2. Only a qualified applicant may file an application to enter into a Development Agreement. A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the Development Agreement. A purchaser under a specifically enforceable contract for the sale and purchase of property shall be considered a qualified applicant with respect to the property that is the subject of the contract. If there is a question as to the sufficiency of the applicant's interest in the subject real property, the County staff may request and rely upon an opinion of the County Attorneys Office.
3. County staff shall prepare and file with the Clerk of the Board of County Commissioners a staff report and recommendation within 45 calendar days of the application submittal. If County staff determines that an application is insufficient, County staff shall provide the applicant with a statement of any additional information required within 15 calendar days of the application submittal, and the report and recommendation of County staff shall be due 45 calendar days from the receipt by County staff of a sufficient submittal.

F. *Requirements of a Development Agreement*

1. A Development Agreement shall require, at a minimum, the following information:
 - a. A legal description of the land subject to the Development Agreement and the names of its legal and equitable owners;
 - b. The duration of the Development Agreement;
 - c. The development uses permitted on the land, including population densities, building intensities and height;
 - d. The land use designation of the property as set forth in the Future Land Use Element of the Polk County Comprehensive Plan;
 - e. The current land use district of the property and that such land use district has been determined to be consistent with the Polk County Comprehensive Plan;
 - f. A description of public facilities that will service the development, including the provider of such facilities;
 - g. The date any new facilities, if needed, will be constructed;
 - h. A schedule to assure public facilities are available concurrent with the impacts of the development;
 - i. A description, including legal descriptions, of any reservation or dedication of land for public purposes;
 - j. A finding that the development permitted or proposed, if developed in accordance with the Development Agreement, satisfies the requirements of the Polk County Concurrency Management System;
 - k. A description of all local development permits approved or needed to be approved for the development of the land;
 - l. A finding that the Development Agreement and the development permitted or proposed is consistent with the Polk County Comprehensive Plan and this Code;
 - m. A statement indicating that the failure of the Development Agreement to address a particular permit, condition, term, or restriction shall not relieve the applicant of the necessity of complying with the law governing said permitting requirements, conditions, term, or restriction;

- n. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the County for the public health, safety, or welfare of its citizens; and
 - o. The design and construction of any public facility by the applicant shall be in compliance with all Federal, State, and County standards and requirements.
2. Development Agreements may require a phasing schedule which includes start and completion dates for the development and subsequent phases.
 3. In addition to the information listed in Section 915F.1, a Development Agreement may contain any terms agreed to by the parties so long as such terms are not inconsistent with Florida law, this Code and the Polk County Comprehensive Plan.

G. *Term of Agreement*

The term of a Development Agreement shall not exceed ten years, or such other time that may be permitted under Florida law at the time of the execution of the Development Agreement. A Development Agreement may be extended by mutual consent of the Board of County Commissioners and the applicant, subject to a public hearing in accordance with the notice requirements of this Section.

H. *Successors*

The burdens of a Development Agreement shall be binding upon, and the benefits of an Agreement shall inure to, all successors in interest to the parties to the Agreement.

I. *Public Hearing*

1. Before entering into, amending or revoking a Development Agreement, the County shall conduct at least two public hearings, one of which shall be held by the Planning Commission.
2. The Board of County Commissioners, at the conclusion of the second public hearing, shall take formal action to approve, approve with modifications agreed to by the applicant, or deny the application.

J. *Public Notice*

Public notice of Development Agreements shall be given pursuant to Section 960.

K. *Governing Laws and Policies*

1. Polk County's laws and policies governing the development of land at the time of the execution of the Development Agreement shall govern the development of the land for the duration of the Development Agreement.
2. Polk County may apply subsequently adopted laws and policies to a development that is subject to a Development Agreement only if the Board of County Commissioners has held a public hearing and determined:
 - a. They are not in conflict with the laws and policies governing the Development Agreement and do not prevent development of the land uses, intensities, or densities in the Development Agreement;
 - b. They are essential to the public health, safety, or welfare, and expressly state that they shall apply to a development that is subject to a Development Agreement;
 - c. They are specifically anticipated and provided for in the Development Agreement;
 - d. Polk County demonstrates that substantial changes have occurred in pertinent conditions existing at the time of approval of the Development Agreement; or
 - e. The Development Agreement is based on substantially inaccurate information supplied by the applicant.
3. This Section does not abrogate any rights that may vest pursuant to common law.

L. *Periodic Review of Agreements*

1. The owner/applicant of lands, subject to a Development Agreement, shall submit an Annual Report at least once every 12 months, commencing 12 months after the effective date of the Agreement. The report shall describe the status of the project and compliance with the terms and conditions of the Agreement.
2. If the County finds and determines that the applicant has complied in good faith with the terms and conditions of the Development Agreement during the period under review, the review for the period is concluded.
3. If the County makes a preliminary finding that there has been a failure to comply with the terms of the Development Agreement, the Board of County Commissioners shall conduct a public hearing at which the applicant shall be given the opportunity to demonstrate good faith compliance with the terms of the Agreement.

- a. If the Board of County Commissioners determines that the applicant has complied in good faith with the terms and conditions of the Development Agreement during the period under review, the review for the period is concluded.
- b. If the Board of County Commissioners determines that the applicant has not complied with the terms of the Development Agreement it may revoke the Development Agreement and all development approvals and permits; or modify the Agreement to the extent the modifications are accepted by the applicant; or sue for specific performance.

M. *Amendment or Cancellation*

A Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest. Prior to amending a Development Agreement, the Board of County Commissioners shall hold two public hearings on the proposed amendment in accordance with the Notice and Hearings provisions of this Section.

N. *Subsequently Enacted State and Federal Laws*

If state or federal laws are enacted after the execution of a Development Agreement which are applicable to, and preclude the parties compliance with the terms of a Development Agreement, such agreement shall be modified or revoked as necessary to comply with relevant state or federal laws.

O. *Recording (Revised 02/05/19 – Ord. No. 19-008)*

Within 14 days after Polk County enters into a Development Agreement, the applicant shall have the Development Agreement recorded in the Public Records of Polk County.

P. *Enforcement*

Any party, any aggrieved or adversely affected person as defined in Section 163.3215(2) F.S., or the state land planning agency, may file an action for injunctive relief in the 10th Judicial Circuit Court to enforce the terms of a Development Agreement or to challenge the validity of the Agreement.

Section 916 Reserved

Section 917 Administrative Determinations

A. Application (Revised 02/05/19 – Ord. No. 19-008; 08/21/12 – Ord. 12-027; 2/21/12 – Ord. 12-006; 5/20/09 – Ord. 09-023)

Any member of the general public may request an Administrative Determination to:

1. determine the permitted or conditional use of a property within the unincorporated area of Polk County;
2. obtain information on the proper application of guidelines, standards or rules established by the Land Development Code; or
3. resolve conflicting objectives, policies, maps, and disputes regarding the administration of the Polk County Comprehensive Plan or Land Development Code.

The request for an Administrative Determination shall be made to the Land Development Division Director by submitting a sufficient application. This request shall include any required fees, information on the subject policy, parcel of land affected, applicable state or federal laws, and any additional information the applicant may have.

B. Response (Revised 08/21/12 – Ord. 12-027; 2/21/12 – Ord. 12-006)

Upon submittal of an application for Administrative Determination, Land Development Division staff shall review the application for sufficiency. Once the application is found sufficient, the Land Development Division Director will have up to 60 calendar days in which to render a determination.

C. Appeals (Revised 02/05/19 – Ord. No. 19-008; 08/21/12 – Ord. 12-027; 2/21/12 – Ord. 12-006; 5/20/09 – Ord. 09-023)

Any affected persons may appeal the determination of the Land Development Division Director within 30 calendar days of the date that notices were mailed by submitting the appropriate application and paying the required fee. Appeals are heard before the Land Use Hearing Officer in a public hearing, advertised in accordance with Section 960.

Section 918 Administrative Decisions

A. Applications (Revised 2/5/19 – Ord. 19-008; 08/21/12 – Ord. 12-027)

Administrative Decisions are rendered as a result of a Level 1, Level 2 or Level 5 Review. Any member of the general public may request an Administrative Decision on a property within the unincorporated area of Polk County to the Land Development Division Director by submitting a sufficient application. The request shall include any required fees, information on applicable policies, parcel of land affected, applicable state or federal laws, and any additional information the applicant may have.

B. Response (Revised 02/05/19 – Ord. No. 19-008; 08/21/12 – Ord. 12-027)

Upon submittal of an application for Administrative Decision, Land Development Division staff shall review the application for sufficiency. In response to a Level 1 Review, the response time shall be as noted in Section 904.D. In response to a Level 2 Review, the response time shall be as noted in Section 905.D. In response to a Level 5 Review, the response time shall be noted in Section 908.D.

C. Appeals (Revised 02/05/19 – Ord. No. 19-008; 08/21/12 – Ord. 12-027; 5/20/09 – Ord. 09-023)

Any affected persons may appeal the decision of the Land Development Director within 7 calendar days of the date the decision was mailed by submitting the appropriate application and fees. A final decision of the appeal is rendered by the Land Use Hearing Officer. The Land Use Hearing Officer shall have 30 calendar days to respond to appeal requests.

Section 919 Reserved (Revised 02/5/19 – Ord. 19-008)

Section 920 Reserved (Revised 02/5/19 – Ord. 19-008)

Section 921 Procedures for Appeals (Revised 02/05/19 – Ord. No. 19-008; 12/17/13 – Ord. 13-067; 08/21/12 – Ord. 12-027; 06/04/04 Ord. 03-96)

Opportunities and procedures for appealing decisions of staff, Planning Commission, Land Use Hearing Officers and the Board of County Commissioners are outlined in Table 921

Type of Case	Opportunity for Appeal
Administrative Decision	Any affected persons may appeal the decision of the Land Development Director within 7 calendar days of the date the decision was mailed by submitting the appropriate application and fees. A final decision of the appeal is rendered by the Land Use Hearing Officer. The Land Use Hearing Officer shall have 30 calendar days to respond to appeal requests.
Administrative Determination	Any affected persons may appeal the determination of the Land Development Division Director within 30 calendar days of the date that notices were mailed by submitting the appropriate application and paying the required fee. Appeals are heard before the Land Use Hearing Officer in a public hearing, advertised in accordance with Section 960.
Waiver of Technical Standards	Any affected persons may appeal the decision of the Development Review Committee within 7 calendar days of the date the decision was mailed by submitting the appropriate application and fees. A final decision of the appeal is rendered by the Land Use Hearing Officer. The Land Use Hearing Officer shall have 30 calendar days to respond to appeal requests.
Level 3 Conditional Uses , Planned Developments	Any applicant who has petitioned the Planning Commission or any substantially affected interest on the petition that has been heard, may request a De Novo hearing before the Board of County Commissioners. A De Novo hearing shall be requested by filing an application within seven days after the decision by the Planning Commission.
Level 4 Conditional Uses, Comprehensive Plan Amendments, Land Development Code, Amendments	Appeals of the County Commission’s Quasi Judicial decisions must be filed with the Circuit Court of the 10 th Judicial Circuit within 30 calendar days of a decision being rendered. Appeals of the County Commission’s legislative decisions may be appealed in whatever way authorized by law.

Variances, Special Exceptions and Temporary Special Exceptions	Appeals must be filed with the Circuit Court of the 10 th Judicial Circuit within 30 calendar days of a decision being rendered.
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Section 922 De Novo Hearing (Revised 02/05/19 – Ord. No. 19-008; 3/18/09 – Ord. 09-007; 11/09/05 - Ord 05-066)

1. Application

Any applicant who has petitioned the Planning Commission for a Level 3 Review or any substantially affected interest on the petition that has been heard, may request a de novo hearing before the Board of County Commissioners (BoCC). A de novo hearing shall be requested by filing an application within seven calendar days after the Planning Commission hearing as described in Section 921. The Board of County Commissioners shall set a time, date, and place for the hearing.

2. Hearing

Once notice has been given, the BoCC shall conduct a hearing upon the application. The BoCC may consider the recommendation of the Planning Commission, the staff report, the DRC’s recommendation, and any testimony, evidence and/or comments presented at the De Novo hearing, if not prohibited by law, which is offered by interested persons appearing at the De Novo hearing, or written comments submitted prior to or at the De Novo hearing, or any other matter the BoCC or any of its individual members deem relevant, if not prohibited by law. The BoCC shall consider the development application based upon all applicable provisions of the Land Development Code and Comprehensive Plan, including, but not limited to, the provisions pertaining to the Level 3 review.

3. Timing

Once an application for a De Novo hearing has been submitted, the Land Development Division shall present possible hearing dates to the applicant and appellant (if not the applicant) and shall submit a “Set Hearing” request for a date on which both the applicant and appellant (if not the applicant) are available. The hearing date shall be within 60 days of the Planning Commission hearing or the Planning Commission decision shall stand. Any requests by the applicant or appellant to continue or withdraw the De Novo hearing shall be requested in writing at least 10 calendar days prior to the hearing so that all affected parties can be notified. The BoCC may deny the request to continue or limit the duration of the continuance. If additional advertising is required, advertising fees are the responsibility of the party seeking the continuance.

4. Authority of the BoCC

The BoCC shall have the authority:

- a. To request briefs to be filed on behalf of any party and prescribe filing and service requirements;
 - b. To hear oral argument on behalf of any party;
 - c. To adjourn, continue, or grant extensions of time for compliance with these rules, either on his own motion or upon application of the party, provided no requirement of law is violated;
 - d. To dispose of procedural requests or similar matters including motions to amend and motions to consolidate; and
 - e. To keep a record of all persons requesting notice of the decision in each case.
5. Decision of the BoCC and Final Action (Revised 3/18/09 – Ord. 09-007; 06/04/04 Ord. 03-96)
- a. The BoCC may approve a development application, approve a development application with modifications and/or conditions, or deny a development application. Pursuant to Section 125.022, Florida Statutes, a written order shall be adopted by the BoCC within 30 days stating the legal basis for the denial of a development application. The BoCC may adopt the written staff report as its written order if it desires in lieu of a separate order, including any adopted modifications to the staff report, if the staff report recommended denial by the DRC.

Section 923 Reserved

Section 930 Variances & Special Exceptions

A. *Land Use Hearing Officer (Revised 02/05/19 – Ord. No. 19-008)*

The Land Use Hearing Officer may grant a variance or special exception from the strict application of this Code, if the following procedures are followed and findings made. Variances to the Green Swamp protection standards in Chapter 5 and all Use Tables in Chapters 2 and 4 are prohibited.

B. Authority (Rev. 02/05/19 – Ord. No. 19-008; 7/11/17 – Ord. 17-036; 9/1/15 – Ord. 15-056; 08/19/14 – Ord. 14-054; 12/3/13 – Ord. 13-0-62; Rev. 9/18/12 – Ord 12-028; (Rev. 1/10/12 – Ord. 12-001; 12/6/11 – Ord. 11-033; 12/1/10 – Ord. 10-083; 12/1/10 - Ord. 10-082; 06/03/09 – Ord. 09-024; 02/16/05 - Ord. 05-05, Rev. 9/18/12 – Ord 12-028, Rev 09/18/12 – Ord. 12-028)

Where there is no other form of relief available, the Land Use Hearing Officer shall have the authority to grant variances or special exceptions from the terms and requirements of this Code relative to:

1. The dimensional requirements in Tables 2.2, 4.2, 4.4, 4.9, 4.13, 4.15, 4.17, 401.08.04 and 5.3. Variances to density, floor area ratio and minimum lot size requirements are prohibited;
2. Section 206.M, Solar Panels and Solar Energy Systems (lot size requirement, Setbacks, height, or solar panel or equipment location requirements)
3. Section 207D, Temporary Mobile Home for Medical Hardship (special exception);
4. Section 209.G, Accessory Structure (size)
5. Section 211.B, Swimming Pool Enclosure
6. Section 214, Distance Between Buildings;
7. Section 215, Setbacks From Private Roads;
8. Section 216, Commercial Vehicle Parking and Storage (special exception);
9. Section 222.E Livestock and Fowl in Residential Neighborhoods
10. Section 224, Alcohol Sales, (Distance requirements only)
11. Section 303, Communication Towers, Section 2 (Separation from Airports);
12. Section 303, Medical Marijuana Dispensaries (Distance requirements only)
13. Section 303 Solar Electric Power Generation Facility (l.d – height)
14. Section 303, Utilities, subsection 8 (electrical power substations and electrical power switching stations);
15. Section 401.04, US highway 98 Selected Area Plan, the following subsections:
 - a. 401.04.D.6.i
 - b. 401.04.D.7.d

- c. 401.04.D.8.j
- 16. Section 610.D.4 & 6, (Setbacks).
- 17. Section 761, Maximum Permissible Noise Levels by Land Use Designation
- 18. The linear distance measurement and height approved by Level 3 Review or Level 4 Review. Variances to density, floor area ratio and minimum lot size requirements are prohibited.
- 19. The height requirements in the Military Compatibility Zone as indicated in Section 642.
- 20. Section 401.08.Southeast Polk Selected Area Plan, subsection 401.08.H.1.
- 21. Section 760.K., Height of Signs

C. *Public Notice (Revised 02/05/19 – Ord. No. 19-008)*

Public notice of hearings by the Land Use Hearing Officer shall be given pursuant to Section 960.

Section 931 Criteria for Granting Variances

A. *Factors to Consider (Revised 02/05/19 – Ord. No. 19-008; 5/20/09 – Ord. 09-023)*

In order to authorize any variance from the terms of these Land Development Regulations, except variances to Section 303 Communication Towers, the Land Use Hearing Officer shall consider the following factors:

- 1. The findings in the Land Development Director or his/her designee’s staff report;
- 2. Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;
- 3. Whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the applicable land use district;
- 4. Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;

5. Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;
6. Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;
7. Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;
8. Whether that in no case shall a variance be granted which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and
9. Whether that the granting of the variance does not circumvent a condition of the intent of a condition placed on a development by the Planning Commission or the BoCC.

B. *Factors to Consider for Granting a Variance as Provided in Section 930 (Rev. 02/05/19 – Ord. No. 19-008; 09/18/12 – Ord. 12-028)*

In order to authorize any variance from the separation and height requirements in Section 303 Communication Towers, and Section 642 Military Compatibility Zones, the Land Use Hearing Officer shall consider the following factors:

1. The findings in the Developments Services Director or his designee’s staff report;
2. Whether granting the variance will be in accordance with the general intent and purpose of this Code;
3. Whether the granting of the variance does not circumvent a condition or intent of a condition placed on a development by the Planning Commission or the BoCC;
4. Whether the requested communication tower would be in compliance with the requirements of the Polk County Airport Zoning Regulations;
5. Whether for private use airports, the requested communication tower would be considered an Airport Obstruction, as defined by this Code, if the private use airport were a public use airport;
6. Whether for private use airports, the owner of the airport has acquired avigation easements to protect the airspace around the airport;
7. Whether there is any evidence that the placement of the requested communication tower within one mile of active airport would create a hazard to lawful aviation activities; and

8. Whether other sites beyond the one mile radius are available to accommodate the proposed tower.
9. Whether for military use airports, the requested communication tower would be considered an Airport Obstruction, as defined by this Code, if the military use airport were a public use airport.
10. Whether for a military airport, airbase, range or landing strip, the owner of the facility has acquired easements to protect the airspaces within the Military Compatibility Zone.
11. Whether this is any evidence that the placement of the communication tower within the Military Compatibility Zone would create a hazard to lawful aviation activities; and,
12. Whether other sites beyond Military Compatibility Zone-1 are available and suitable to accommodate the proposed tower.

C. *Conditions, Restrictions, and Safeguards (Revised 02/05/19 – Ord. No. 19-008)*

The Land Use Hearing Officer may prescribe appropriate conditions, restrictions and safeguards in granting a variance. The Land Use Hearing Officer may also, as a condition of approval, require compliance with any site plan or other specification submitted by the applicant when the Land Use Hearing Officer has relied upon the site plan or specification in granting the variance. Violation of any conditions, restrictions, and safeguards, when made a part of the terms under which the variance is granted, shall be considered a violation of this Code.

D. *Appeals From Decisions of the Land Use Hearing Officer (Revised 02/05/19 – Ord. No. 19-008)*

Any person or persons aggrieved by any decision of the Land Use Hearing Officer shall be entitled to a review of the decision by the 10th Judicial Circuit Court of Polk County by filing an appropriate petition with the Clerk of the Court within 30 calendar days after the Land Use Hearing Officer's decision is rendered.

E. *Re-application for an Exception to the Land Development Code (Revised 02/05/19 – Ord. No. 19-008)*

After a petition for a variance for a property has been denied either by final decision of the Land Use Hearing Officer or upon appeal to the Circuit Court, a re application for the same variance for the same property shall not be accepted during a period of three years after the final decision. A variance may be denied without prejudice by the Land Use Hearing Officer and re-application for such variance may be submitted without waiting the three

year period.

Section 932 Waivers to Technical Standards

A. *Minimum Requirements for Consideration of Waivers (Rev. 02/05/19 – Ord. No. 19-008; 05/06/09 - Ord. 09-021)*

Upon submittal of a sufficient application for a waiver to technical standards of this Code, as prescribed in this section, the Development Review Committee shall consider and grant or deny waivers from the requirements set forth in this Code, as outlined in Section 932.B below, and impose such conditions and safeguards that are reasonably necessary to comply with the provisions of this Code and Comprehensive Plan or for the protection of the health, welfare or safety of the general public. When considering the waiver application, the Development Review Committee shall consider all of the following criteria:

1. Whether the application of the provisions of the Code would cause unnecessary and undue hardship on the use of the property;
2. Whether the waiver granted is the minimum adjustment that will make possible the reasonable and permitted use of the property;
3. Whether the granting of the waiver will be in harmony with the general intent and purpose of this Code and that such waiver will not be injurious or detrimental to the public health, safety or welfare by, without limitation, creating unsafe traffic conditions or cause increased maintenance expenses in connection with the subdivision improvements;
4. The granting of the waiver will not likely result in setting a precedent for a similar waiver request in the area; and
5. Whether all other avenues of relief have been exhausted.

B. *Authority (Rev 9/6/16 – Ord. 16-042; 06/04/13 Ord. # 13-020; Revised 12/6/11 – Ord. 11-033; 12/1/10 - Ord. 10-082; 3/18/09 – Ord. 09-010; 05/06/09 - Ord. 09-021)*

Where there is no other form of relief available, the Development Review Committee shall have the authority to grant waivers from the terms and requirements of this Code relative to the following sections:

1. The Impervious Surface Ratio (ISR) requirements contained in Table 2.2, and Table 4.18, unless specified otherwise in the Comprehensive Plan or Land Development code. This waiver shall only be allowed within non-residential land use districts within the Urban Development Area (UDA) and the Urban Growth Area (UGA).

Approval of this waiver is contingent upon the applicant complying with all landscape and buffer requirements. A waiver request shall not be granted for both the landscaping and ISR requirements. This waiver shall not be permitted within the Green Swamp ACSC. In no instance shall the ISR exceed the ratios provided for in the Comprehensive Plan.

2. Section 230, Specific Provisions Applicable to Non-Residential Districts and Uses
3. Section 303, Solar Electric-Power Generation Facility (subsection l.e.i)
4. Section 401.02.E.1.c. Multiple access to residential developments of 200 dwelling units or more in the Ronald Reagan Selected Area Plan
5. Section 401.04.D.8.b, ISR in TCX in the US Highway 98 Selected Area Plan
6. Section 401.04.N.1.a, Sidewalks along US highway 98 and the Ft. Fraser Trail in the US Highway 98 Selected Area Plan
7. Section 630.I, Flood Hazard Management and Flood Plain Protection (Allowable Uses)
8. Section 705, Site Access
9. Section 707, Sidewalks
10. Section 708, Parking Space Requirements
11. Section 709, Parking Area Design
12. Section 720, Landscaping and buffering
13. Section 740, Storm Water Management
14. Chapter 8
15. Appendix A, Technical Standards Manual

C. *Burden*

The burden of demonstrating entitlement to a waiver from these regulations shall rest with the applicant.

D. *Approval Process (Revised 02/05/2019 – Ord. No. 19-008; Added 05/06/09 - Ord. 09-021)*

1. In order for an application for a waiver submitted pursuant to this section to be approved, all members of the Development Review Committee shall determine that the waiver is appropriate, based upon all the evidence and the criteria enumerated in this section. Furthermore, the Development Review Committee shall determine whether the waiver request is in compliance with the Code and the Comprehensive Plan. If one member of the Development Review Committee denies the request for a waiver, then the waiver shall be denied. Decisions by the Development Review Committee regarding waiver applications may be appealed pursuant to Section 918.C, and Section 921, of this Code.
2. All waiver applications shall be processed in accordance with a Level 2 Review as outlined in Section 905.D, of this code.

E. *Consistency with the Comprehensive Plan*

Approval of any waiver request shall be consistent with the Polk County Comprehensive Plan.

F. *Rescinding of Waivers*

If the factual basis upon which a waiver has been granted materially changes, the County Attorney or Department Director may modify or rescind such waiver to the extent prescribed by law.

Section 933 Re-application for Land Use Change (Revised 02/05/2019 – Ord. No. 19-008)

After a petition for an action for a property has been denied by final decision of the Board of County Commissioners, Planning Commissioner or Land Use Hearing Officer, a re-application for requests without material changes, on the same property shall not be heard for a period of one year after the final decision. However, an action may be denied without prejudice by the applicable Board or Land Use Hearing Officer and re-application for any action may be submitted without waiting the one year period. The Board or Land Use Hearing Officer, as applicable, may grant relief to the one year waiting period.

Section 934 - 958 Reserved (Revised 2/5/2019 – Ord, 19-008)

Section 959 Public Hearings (Added 2/5/2019 – Ord. 19-008)

The approving/reviewing authority (Land Use Hearing Officer, Planning Commission or Board of County Commissioners) shall conduct the public hearing in accordance with the following procedures, as supplemented by law, rule or decision.

A. *Burden and Nature of Proof*

The applicant for any development order carries the burden of persuasiveness and of demonstrating entitlement to the development order.

B. *General Hearing Requirements*

Public hearings held by the Hearing Officer, Planning Commission and Board of County Commissioners to review development order and land use requests shall conform to the following requirements of the Florida Statutes and the following provisions:

1. Scheduling – Upon the issuance of a written recommendation by the DRC, applications shall be scheduled for a public hearing before the applicable reviewing or approving authority with advance notice provided as detailed in Table 960.
2. Public Notice – The public shall be notified of the hearing as provided in this chapter.
3. Jurisdiction – The reviewing or approving authority shall determine whether it has jurisdiction over the matter and each member must determine whether he/she must abstain or otherwise be disqualified.
4. Matters of Official Notice – The reviewing or approving authority may take official notice of known information related to the issue, including State law and applicable ordinances, resolutions, rules and official policies of the County, and other public records and facts judicially noticeable by law. Matters officially noticed need not

be established by evidence and are binding to the extent that they are relevant and material. Requests that official notice be taken shall be made on the record and an opportunity for rebuttal shall be given to opposing parties. The reviewing or approving authority may take notice without prompting or suggestion of the matters listed above and shall state all matters officially noticed for the record.

5. Members of the reviewing or approving authority may view the site of the proposed development with or without notification to the parties, but after the visit, shall place the time, manner and circumstances of the viewing on the record.
6. Representation – Any person may appear at a public hearing and submit evidence, either individually or as a representative of an organization, upon receiving proper recognition from the person presiding over the hearing. Anyone representing an organization must present written evidence of their authority to speak on behalf of the organization in regard to the matter under consideration, unless the person presiding over the hearing waives this requirement. Each person who appears at a public hearing shall identify himself/herself and his/her address and, if appearing on behalf of an organization, shall state the name and mailing address of the organization.
7. Testimony – The County staff, the applicant, and any interested person may present information to the reviewing or approving authority. The reviewing or approving authority may approve or deny a request from a person attending the hearing to ask a question. Unless otherwise specified, if the request to ask a question is approved, the question will be addressed to the person submitting testimony.
8. Irrelevant Testimony Excluded – The body conducting the hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.
9. Restatement of Issues, Law and Facts – Before the hearing has concluded, the reviewing or approving authority shall restate the issues and comment upon the law and facts pertaining to the decision, and if opportunity for rebuttal is provided, may ask additional questions of any person who has testified or presented information.
10. Continuance and Adjournment – The body conducting the hearing may, on its own motion or at the request of any person, continue the hearing to a fixed date, time and place. In the event that the continuance is to a specified date, time and place, the specific date, time and place of the continued public hearing shall be publicly announced at the meeting at which the continuance is approved.
11. Record of Proceedings – All proceedings shall be recorded steno graphically or electronically and may be transcribed at the expense of the party making the request if required for review or if ordered by the reviewing or approving authority.

The reviewing or approving authority shall, where practicable, include in the hearing record each item of physical or documentary evidence presented and shall mark each item to show the identity of the person who presented it. Each exhibit

received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, when it may be returned to the person identified thereon, or otherwise disposed of in accordance with Florida law.

C. *Quasi-Judicial Hearing Procedures*

All quasi-judicial hearings conducted pursuant to this Code by the Board, the Planning Commission, a Hearing Officer or any other body or official, shall be conducted in accordance with this Code and the rules of procedure for quasi-judicial hearings established by the Board. In all quasi-judicial proceedings, the applicant shall bear the burden of demonstrating by competent and substantial evidence that the application satisfies the standards and requirements of this Code and the Comprehensive Plan. Quasi-judicial hearings shall meet the following requirements:

1. Oaths Required – In all public hearings for quasi-judicial matters, all testimony and evidence shall be given under oath or by affirmation to the body conducting the hearing.
2. Procedure – The reviewing authority may call and question witnesses as deemed necessary and appropriate.
3. Transcript – For Hearing Officer proceedings, the Land Development Director shall ensure that a transcript of the hearing will be made available upon request of the Hearing Officer at the County’s expense, or any party at the requesting party’s expense, and shall be part of the record for the hearing.
4. Action by the Hearing Officer – Upon the close of the public hearing and consideration of the record:
 - a. The Hearing Officer shall issue an order to approve, approve with conditions, or deny the application. The order shall be in writing and include findings of fact and conclusions of law, including compliance or noncompliance of the proposed development activity with applicable provisions of the Comprehensive Plan and the Code. The Hearing Officer’s order shall be filed with the Clerk of the Land Use Hearing Officer within 14 calendar days after conclusion of the public hearing.
 - b. If the Hearing Officer determines that new conditions are necessary, then the application must be referred back to staff to ensure the dual rational nexus test has been satisfied and to set an additional public hearing. The item shall be placed on the next available public hearing agenda.
5. Notice of Action – Any person wishing to receive notice of the Hearing Officer’s final decision or recommendation may supply the Land Development Director with his/her name, address, and a stamped self-addressed envelope for that purpose.

D. *Legislative Hearing Procedures*

When reviewing applications of a legislative nature, the Planning Commission and Board of County Commissioners shall comply with the General Hearing Requirements in Section B. Upon the close of the public hearing and consideration of the record, the approving authority shall:

1. Approve, approve with changes or deny the application (if acting as final approval authority) or issue a recommendation to the BoCC for approval, denial or approval with changes of said amendment; or
2. Determine that more information is necessary , refer the application back to staff, and schedule an additional public hearing to consider any additional evidence necessary to decide upon the application.

E. *Approval Subject to Conditions*

When approving conditional and special use permits and variances, the Planning Commission, the Hearing Officer and Board may attach such conditions to approval as deemed necessary to assure compliance with this Code. Such conditions may address matters including, but not limited to: limitations on size, bulk and location; during of construction period; requirements for landscaping, signage, outdoor lighting and the provision of adequate ingress and egress; duration of the approval; design and appearance; hours of operation; and the mitigation of traffic and environmental impacts. Such conditions may be imposed for a specified period of time, after which time the condition shall expire and the obligations of the applicant pertaining to such condition shall be automatically terminated.

Section 960 Public Notice (Revised 02/05/19 – Ord. No. 19-008; 03/07/12 – Ord. 12-009)

This Section contains notice requirements for public hearings for all development orders that are subject to the public notice requirements of this Code and Florida Statutes. Unless otherwise provided by law, regulation, or decision, addresses for a mailed notice required by this Chapter shall be obtained from the records of the Polk County Property Appraiser. The failure of any person to receive notice shall not invalidate an action if a good faith attempt was made to comply with the notice requirements.

A. *Types of Public Notice (Revised 02/05/2019 – Ord. No. 19-008)*

The types of public notice Polk County shall provide for public hearings shall be as follows:

Legal Ad in Newspaper – Legal ads for public notice shall be in accordance with Florida Statutes. The expense of all newspaper publications shall be borne by the applicant.

Newspaper advertisements for variance or special exception hearings have no size requirement and may be placed in the classified ad section of a newspaper.

Notice by Mail - Notice to affected property owners shall be per Florida Statutes. In addition, notice by mail shall be sent to all persons who own property within 500 feet of the property that is the subject of the proposed action as shown on the current year's tax rolls of the Polk County Property Appraiser. Should this delineation result in fewer than 12 different landowners, additional adjacent landowners shall be noticed so that a minimum of 12 are notified. Information on the Notice by Mail shall include, a case name and number, a description of the proposed action before the Planning Commission or BoCC, a brief description of the property involved (if applicable), and the time, date, and place of the hearing. The expense of the notice by mail shall be borne by the applicant.

For Development Agreements only, the Notice by Mail shall specify:

1. The day, time, and place of the first public hearing on the proposed Development Agreement and a statement that the day, time, and place of the second public hearing will be announced at the first public hearing;
2. The location of the land subject to the Development Agreement;
3. The development uses proposed on the property, the proposed residential densities, and the proposed building intensities and height;
4. Instructions for obtaining further information regarding the request, including where a copy of the proposed agreement can be obtained.

For variances and special exceptions, notice by mail shall be sent to all persons who own property within 250 feet of the property that is the subject of the proposed action as shown on the current year's tax rolls of the Polk County Property Appraiser. Information on the Notice by Mail shall include a case name and number, a description of the proposed action before the LUHO, a brief description of the property involved, and the time, date, and place of the hearing.

Posting Sign - property under consideration shall have sign(s), provided by the Land Development Division, posted at least 15 days prior to the scheduled hearing date. The sign(s) shall specify that a land use action on the property is under consideration by either the Planning Commission, the LUHO, or the BoCC and shall specify the time, date and place of the public hearing(s). The sign(s) shall be no less than 18 inches by 24 inches in size, produced with a bright noticeable color and placed in sufficient numbers and suitable locations so as to be easily seen by the public. All property frontages on public rights of way shall be posted and shall in no case be posted with less than one sign per 500 feet of road frontage, unless a more effective posting of signs based on the size and location of the property under consideration is determined by the Land Development Director or their designee.

B. *Summary of Notice Requirements (Revised 02/05/2019 – Ord. No. 19-008)*

All applications for development which require public hearings shall be advertised in accordance with Table 960. This table list the number of days prior to the public hearing that public notice will be given.

Public notice requirements for Phosphate Mine operating permit renewals, conceptual mine plans, plan amendments, and variances shall be in accordance with the Phosphate Mine ordinance, ORD 88-19.

Table 960 Advance Notice for Public Hearings

Type of Case	Land Use Hearing Officer, Posting Sign	Land Use Hearing Officer, Mail Notice*	Land Use Hearing Officer, Legal Ad	Planning Commission, Posting Sign	Planning Commission, Mail Notice*	Planning Commission, Legal Ad	Board of County Commissioners, Posting Sign	Board of County Commissioners, Mail Notice*	Board of County Commissioners, Legal Ad
Brownfield Designations	n/a	n/a	n/a	n/a	n/a	n/a	15	30 / 15	10
Comprehensive Plan Amendments – Small Scale	n/a	n/a	n/a	15	30 / 15	10	15	30 / 15	10
Comprehensive Plan Amendments – Map (requires 2 public hearings)	n/a	n/a	n/a	15	30 / 15	10	15	30 / 15	10
Comprehensive Plan Amendments – Text (requires 2 public hearings)	n/a	n/a	n/a	n/a	n/a	10	n/a	n/a	10
De Novos	n/a	n/a	n/a	n/a	n/a	n/a	15	30 / 15	10
Development Agreements	n/a	n/a	n/a	n/a	- / 15	7	n/a	- / 15	7
Development of Regional Impact (DRI)	n/a	n/a	n/a	60	- / 60	60	60	- / 60	60
DRI Substantial Deviations	n/a	n/a	n/a	60	- / 60	60	60	- / 60	60
DRI Notice of Proposed Changes									15
Joint Planning Agreements	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	10

* Mail Notice: Subject Site – Surrounding Properties

Land Development Code (LDC) Text Amendments (requires 2 public hearings)	n/a	n/a	n/a	n/a	n/a	10	n/a	n/a	10
LDC Sub-District Map Changes	n/a	n/a	n/a	15	30 / 15	10	15	30 / 15	10
Level 3 Conditional Uses	n/a	n/a	n/a	15	30 / 15	10	n/a	n/a	n/a
Level 4 Conditional Uses	n/a	n/a	n/a	15	30 / 15	10	15	30 / 15	10
Appeals of Administrative Determinations	15	- / 15	10	n/a	n/a	n/a	n/a	n/a	n/a
Appeals of Non-Conforming Rights Determinations	15	- / 15	10	n/a	n/a	n/a	n/a	n/a	n/a
Appeals to Waivers	15	- / 15	10	n/a	n/a	n/a	n/a	n/a	n/a
Variance	15	30 / 15	10	n/a	n/a	n/a	n/a	n/a	n/a
Special Exceptions	15	30 / 15	10	n/a	n/a	n/a	n/a	n/a	n/a
Temporary Special Exceptions	15	30 / 15	10	n/a	n/a	n/a	n/a	n/a	n/a

Public Notice Requirements for Phosphate Mine Operating Permit Renewals, conceptual mine plans, plan amendments, and variances shall be in accordance with the Phosphate Mine Ordinance, ORD 88-19.

C. *Alternative Methods for Providing Notice*

1. Alternative Notice:

In cases in which a proposed Comprehensive Plan Map Amendment or Conditional Use involves 5 percent or more of the total land area of the county, Polk County may provide for public notice and hearings as follows:

a. Notice of Public Hearing:

Polk County shall hold two advertised public hearings on the proposed Comprehensive Plan Map Amendment or Conditional Use. The first public hearing shall be advertised in the newspaper 7 days prior to the day of the first public hearing. The second public hearing shall be advertised 5 days prior to the day of the public hearing. The day, time, and place at which the second public hearing will be held shall be announced at the first public hearing.

b. Advertising Requirements:

The required newspaper advertisements shall be no less than one-quarter page in a standard size or a tabloid size newspaper, and the headline in the advertisement shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county and of general interest and readership in the community pursuant to Chapter 50, Florida Statutes, not one of limited subject matter. Whenever possible, the advertisement shall appear in a newspaper that is published at least 5 days a week. The advertisement shall also contain a geographic location map which clearly indicates the area covered by the proposed Comprehensive Plan Map Amendment or Conditional Use. The map shall include major street names as a means of identification of the area.

In lieu of publishing the advertisements set out in the above paragraph, Polk County may mail a notice to each person owning real property within the area covered by the Comprehensive Plan Map Amendment or Conditional Use. Such notice shall clearly explain the proposed Comprehensive Plan Map Amendment or Conditional Use and shall notify the person of the time, place, and location of both public hearings on the proposed Comprehensive Plan Map Amendment or Conditional Use.

2. Supplemental Notice Methods:

In order to supplement the methods of notification required by this section, Polk County may use other methods, such as posting notice on the County's website, mass e-mail notices, social media, neighborhood registry mailers, etc., to expand notification of required public meetings in a cost effective manner. Such notice(s) shall not be in lieu of any required advertising contained herein, but shall be supplemental only.

Section 961 - 969 Reserved

Section 970 Agencies and Boards

It is the purpose of this Chapter to establish County administrative agencies and citizen boards to administer the requirements of this Code and to establish procedures to implement this Code. The following boards and agencies are created to administer the provisions of this Code under the authority prescribed by this Code and Florida law.

Section 971 Department of Growth Management

A. *Creation (Revised 5/20/09 – Ord. 09-023)*

The Department of Growth Management, (hereinafter referred to as the Department) or other departments as may be designated by the County Manager, shall ensure that all administrative functions of the county government relating to the administration of this Code are performed. The Land Development Division is the primary repository for most development applications.

B. *Administrative Organization*

The Department may be subdivided into several divisions, with each performing responsibilities that may, from time to time, be assigned by the Director of the Department.

C. *Director of Growth Management (Revised 02/05/19 – Ord. No. 19-008; 5/20/09 – Ord. 09-023)*

1. The final responsibility for daily implementation and interpretation of this Code shall rest with the Director. The Director may assign responsibility for implementation and interpretation of this Code to appropriate staff.
2. The Director shall ensure that all administrative functions necessary for the administration of this Code are performed. The Director, through assigned staff, shall ensure the following
 - a. Receipt of applications for all development approval;
 - b. Determination of the completeness of development applications;
 - c. Conduct all Pre-application Conferences;

- d. Scheduling of all applications for development review before the Development Review Committee and, where applicable, the Planning Commission, LUHO, and the Board of County Commissioners;
 - e. Ensure that proper notice is given prior to all hearings on development applications;
 - f. Ensure that all time limits prescribed by this Code are met; and
 - g. Receive all applications for amendments to the Polk County Comprehensive Plan and coordinate review of the application with the Land Development Division.
3. The Director shall ensure that the Land Development Director or his/her designee chairs the Development Review Committee.

Section 972 Development Review Committee

A. *Creation and Appointment of Chair (Revised 5/20/09 – Ord. 09-023)*

There is hereby created a Development Review Committee (DRC) to be chaired by an individual appointed by the Land Development Director.

B. *Membership (Revised 5/20/09 – Ord. 09-023)*

1. The membership of the Committee shall be composed of the chairman and a representative of each of the following entities:
- a. Land Development Division;
 - b. County Engineer Section;
 - c. Fire Services Division;
 - d. Public Works Department;
 - e. Polk County Attorneys Office;
 - f. Leisure Services Division; and
 - g. E-911/Addressing.
2. Should any of the entities listed in Section 972B.1 no longer exist, through a restructuring of County staff, the membership positions shall be filled by those entities which most closely represents the interests listed in Section 972B.1 ,

without the need to immediately take special action to amend this Code. Such amending of this Code should occur at a time when the ordinance is going to be amended for other reasons. No action of the DRC shall be invalidated due to this Section not being amended in a timely manner.

3. A request for information, as required, may be made to representatives of the following agencies:
 - a. Transportation Planning Organization (TPO);
 - b. Polk County Sheriff's Office;
 - c. Polk County School District;
 - d. Natural Resources and Drainage;
 - e. Building Division;
 - f. Codes Enforcement;
 - g. All applicable utility providers (e.g., gas, electric, cable television, telephone, sewer, water, garbage);
 - h. The three water management districts having jurisdiction within Polk County;
 - i. The Polk County Health Department, and other County Departments and Divisions; and
 - j. The Department of Community Affairs or other state or federal agencies with jurisdiction.
4. The Committee shall meet weekly to review development applications. The chairman may:
 - a. Refer matters to the Committee for review and comment;
 - b. May call additional meetings; and
 - c. May cancel weekly meetings due to a lack of applications or scheduling conflicts for holidays or other reasons.
5. DRC members review concept and final development plans. The DRC shall consider:
 - a. Whether the proposed development complies with this Code and the Comprehensive Plan;

- b. Other applicable regulations, review procedures, and submission requirements; and
 - c. Other applicable factors and criteria prescribed by the this Code, Comprehensive Plan, or other regulations and laws.
6. The entities listed in Section 972B.1 shall attend DRC meetings when issues related to their organization are on the agenda.
 7. The entities listed in Section 972B.3 should attend DRC meetings when issues related to their organization are on the agenda.
 8. The applicant shall attend DRC meetings pursuant to Section 905D.3.

Section 973 Citizen Boards

A. *Generally (Revised 02/05/19 – Ord. No. 19-008)*

The County, as prescribed in this Section, shall appoint citizen volunteers to serve on all citizen boards. Notice of vacancies on citizen boards shall be published in a newspaper of general circulation in Polk County to encourage application by citizen volunteers. The Planning Commission shall be governed by these provisions:

B. *Board Membership and Operation (Rev. 11/09/05 - ord.05-067)*

1. Each Board shall have seven members and, whenever practical, three alternates appointed by the Board of County Commissioners. Members shall serve at the pleasure of the Board of County Commissioners. Any interested person may be appointed to a Board; however, whenever practical, the Board should include members representing each of the following areas:
 - a. An AICP-certified planner;
 - b. A licensed professional engineer, surveyor and mapper, architect, or landscape architect;
 - c. A natural or environmental specialist;
 - d. A farmer, rancher, or extension agent, or an individual involved in other aspects of agriculture; and
 - e. A business person, who may include a licensed realtor, licensed general contractor, or subcontractor.
2. Each member shall reside in Polk County.

3. Each member shall be appointed to a three year term except that, initially, two members shall be appointed for a term of one year, three members shall be appointed for a term of two years, and two members shall be appointed for a term of three years. No person may serve more than two consecutive full length, three year terms. In the case of an initial appointment being less than three years, such person may serve three consecutive terms, so long as such length of service is no greater than eight years. Persons disqualified by this term limitation provision may be appointed again after one year elapses following the expiration of the previous final term of service.
4. When a position becomes vacant before the end of the term, the Board of County Commissioners shall appoint an individual to fill the vacancy for the duration of the vacated term. A member whose term expires may continue to serve until a successor is qualified and appointed.
5. The members of each Board shall annually elect a chair and vice chair from among the members and may create and fill other offices as that Board deems needed. The vice chair shall perform the role of chair in the absence of the chair.
6. The Director shall appoint a County employee to serve as secretary to each Board, recorder, and custodian of all Board records.
7. The Board of County Commissioners shall appropriate funds to permit each Board to perform its prescribed functions.
8. Members of citizen boards shall not be compensated, but may be paid for travel and other expenses incurred on Board business under procedures prescribed in advance by the Board of County Commissioners.
9. If any member, without cause and without approval of the chairman, fails to attend two consecutive meetings per year, the relevant Board will declare the member's office vacant and notify the Board of County Commissioners, which shall promptly fill the vacancy after advertising such vacancy.
10. The members of citizen boards shall be subject to the requirements of an annual financial disclosure and the Florida Government in the Sunshine Act as provided by law.
11. The members of Citizen Boards may serve on more than one Board.
12. All volunteer Citizen Boards members shall receive training prior to appointment in the following areas:
 - a. Florida Sunshine Law;
 - b. Florida Ethics;

- c. Robert's Rules of Order;
- d. Polk County Comprehensive Plan;
- e. Polk County Land Development Code; and
- f. all other relevant ordinances and policies of the Board of County Commissioners.

C. *Board Procedures (Rev. 12/17/13 – Ord. 13-067; 12-04-03 Ord. 03-52)*

- 1. Each board shall adopt rules of procedure to carry out its purposes. All rules must conform to this Code, other County ordinances, and state law.
- 2. Each board shall meet at least once each calendar month, unless canceled by its chair, and more often at the call of the chair, by written notice signed by at least three members of the Citizen Board or the Board of County Commissioners.
- 3. Each board shall keep minutes of its proceedings, indicating the attendance of each member, and the decision on every question.
- 4. Four voting members shall constitute a quorum.
- 5. Unless otherwise prescribed by this Chapter, each decision of a board must be approved by a majority vote of the members present at a meeting in which a quorum is in attendance and voting. A tie vote results in a denial of a development application.
- 6. Each board shall create subcommittees needed to carry out the purposes of the BoCC. The chair of each Citizen Board shall annually appoint the membership of any subcommittees from the members of the Board.
- 7. Any and all testimony shall be taken under oath.
- 8. A member of the County Attorney's staff shall attend meetings of all boards and assist in the conduct of its hearings.

D. *Annual Training (Revised 5/20/09 – Ord. 09-023)*

The Land Development Division is responsible for this annual training in the following areas:

- 1. Florida Sunshine Law;
- 2. Florida Ethics;

3. Robert's Rules of Order;
4. Polk County Comprehensive Plan;
5. Polk County Land Development Code, and
6. all other relevant ordinances and policies of the Board of County of Commissioners

Section 974 Planning Commission

A. *Establishment (Revised 3/18/09 – Ord. 09-008; 12/04/03 Ord. 03-52)*

1. The Planning Commission is hereby created as a Citizen Board to review and approve, or deny, certain types of development applications, pursuant to the use tables in Chapters 2, 4, and 5 of this Code. The Planning Commission is hereby designated the Local Planning Agency for Polk County pursuant to Florida Statutes Section 163.3174.
2. In addition to the regular membership, the Planning Commission shall include one nonvoting member designated by the Polk County School Board and appointed by the Board of County Commissioners pursuant to Florida Statutes Section 163.3174; and one ex officio, nonvoting member designated by the Commanding Officer of the Avon park Air Force Range and appointed by the Board of County Commissioners pursuant to Florida Statutes Section 163.3175(5). Each of these nonvoting members may designate an alternative to serve in their place in the circumstance that the nonvoting member cannot attend a Planning Commission meeting. However, these alternates must be approved by the Board of County Commissioners.

B. *Powers and Duties (Revised 02/05/2019 – Ord. No. 19-008)*

The procedures of the Planning Commission shall be consistent with Section 973C, and the following:

1. The Planning Commission shall review and act upon applications for Preliminary Development Plans for Level 3 and 4 Reviews and other provisions required by this Code.
2. The Planning Commission shall have the authority to require a development to meet a higher standard than the minimum required by this Code, if necessary to mitigate any off-site impact.
3. The Planning Commission shall hear and decide all applications for a variance from the requirements of this Code which are part of an application for a Planned Development, or a C-3 and C-4 Conditional Use.

4. Pursuant to the Community Planning Act (Act), the Planning Commission is hereby designated to be the Local Planning Agency and shall perform the duties and functions prescribed in the Act and this Code.

C. *Administrative Hearings*

1. Written Order for Denials (Revised 2/5/2019 – Ord. 19-008; 3/18/09 – Ord. 09-007)

Should the Planning Commission deny a Level 3 Review development application and an application for De Novo hearing is not filed within seven calendar days of the Planning Commission’s hearing on the development application, then pursuant to Florida Statutes Section 125.022, the Planning Commission shall adopt a written order stating the legal basis for the denial of the development application at the next scheduled Planning Commission meeting. The Planning Commission may adopt the written staff report as its written order if it desires in lieu of a separate order, including any adopted modifications to the staff report, if the staff report recommended denial by the DRC.

2. Record of Proceedings
 - a. All proceedings shall be recorded steno graphically or electronically and may be transcribed at the expense of the party making the request if required for review or if ordered by the Planning Commission.
 - b. The Planning Commission shall, where practicable, include in the hearing record each item of physical or documentary evidence presented and shall mark each item to show the identity of the person who presented it. Each exhibit received into evidence shall be retained in the hearing file until after the applicable appeal period has expired, when it may be returned to the person identified thereon, or otherwise disposed of in accordance with Florida law.
 - c. The findings and order shall be included in the record.

Section 975 Land Use Hearing Officers

A. *Duties*

Each Hearing Officer shall have the following duties related to land development:

1. To conduct public hearings regarding applications for Variances, Special Exceptions and Temporary Special Exceptions;

2. To issue orders with findings of fact and conclusions of law, in accordance with relevant standards and criteria set forth in this Code;
3. To visit the site of a land development application;
4. To decide applications for Signage Plans;
5. To decide applications for Variances, Special Exceptions and Temporary Special Exceptions;
6. To decide appeals of Administrative Decisions, Administrative Determinations including Non-Conforming Rights Determinations, and Waivers;
7. To take any other action authorized by ordinance or resolution of the Board; and
8. To decide upon any other matter assigned to the Hearing Officer pursuant to this Code.

B. *Powers*

Each Hearing Officer shall, in the course of carrying out the duties described herein, be empowered to:

1. Administer oaths and affirmations where authorized by law;
2. Issue notices;
3. Receive relevant evidence;
4. Approve, approve with modifications and/or conditions, or deny a development application or appeal; and
5. Take or cause other such action as necessary to perform such duties.

C. *Appointment, Qualifications, Term, Removal and Compensation*

The Board shall appoint one (1) or more qualified Hearing Officers. Each Officer shall be appointed for a term of two (2) years and may be reappointed by the Board. All Hearing Officers serve at the pleasure of the Board and are not employees of Polk County. In addition, the Board may contract with an entity or agency including, without limitation, a law office or law firm to provide a Hearing officer who meets the qualifications listed below.

1. Qualifications: Generally, Hearing Officers shall have a degree in law from an accredited American Bar Association law school, be licensed to practice law in the State of Florida, and have a minimum of two (2) years of experience in land use,

zoning, or other land use regulatory experience; or have a bachelor's degree in planning or other directly related field and a minimum of five (5) years of experience in land use, zoning, or other land use regulatory experience. A master's degree in planning or directly related field and American of Certified Planners designation is preferred. A Hearing Officer shall not be an employee of Polk County. The Board may modify these qualifications as needed.

2. **Limitations on Hearing Officer Activities While Appointed:** A Hearing Officer shall not hold other appointive or elective office or position in Polk County government. Further, a Hearing Officer shall not present or assist in the preparation of any land use matter or application before another Hearing Officer or the Board during his or her term nor shall the Hearing Officer present or assist in preparation of any land use matter or application requiring administrative approval by Polk County. The firm with which a Hearing Officer is or was associated with shall not present or assist in the preparation of any land use matter before that Hearing Officer. All Hearing Officers shall be subject to Florida Statutes, Chapter 112, Part III.
3. **Limitations on Activities after Term:** Hearing Officers are, for a period of six (6) months from the date of termination as holder of such office, hereby expressly prohibited from acting as agent or attorney in any proceeding, application or matter before any commission, board, agent or other office of Polk County government. The limitation above shall be for a period of two (2) years if the property was the subject of an application heard by the Hearing Officer during his or her term.
4. **Removal:** Each officer shall be appointed for a term of two (2) years and may be reappointed by the Board. All officers shall serve at the pleasure of the Board and are not employees of Polk County. If an officer fails to attend two or three consecutive hearings without good cause, the position shall be considered vacant and the Board shall promptly fill the remainder of the unexpired term.
5. **Compensation:** A Hearing Officer shall be compensated for his or her services and expenses. The Board shall have the authority and responsibility for setting the amount of the compensation, the source of such compensation and limitations on compensable expenses.
6. **Disqualification of Hearing Officer:** The Hearing Officer shall disqualify himself or herself when it reasonably appears that he or she has a conflict of interest. When a Hearing Officer is disqualified, the case shall be randomly assigned to another Hearing Officer.

D. *Freedom from Improper Influence*

1. No person who is or may become a party of record before the Hearing Officer, nor anyone appearing on behalf of a party of record before the Hearing Officer, shall

communicate ex parte with any Hearing Officer about an application currently before him or her.

2. No member of the Board shall communicate ex parte with any Hearing Officer about an application before him or her. Communication between the Hearing Officer and the Board acting as a collegial body shall be undertaken in accordance with the terms of this Code.
3. In order to assure that the Hearing Officer is free from improper influence, a Hearing Officer shall neither initiate nor consider ex parte communications concerning a pending or impending application. A Hearing Officer, however, may obtain the advice of a disinterested expert other than another Hearing Officer on law or planning applicable to a proceeding before him, if he gives notice to the parties of record of the person consulted and the substance of the advice, and affords the parties of record reasonable opportunity to respond.
4. Ex parte communications as contemplated herein shall not include the required transmission of official documents by staff pursuant to the terms of this Code nor shall it include discussion with representatives of the Polk County Attorney's Office, regarding discussions, not related to a specific land use case to be heard before him or her.

E. *Maintenance of Records*

The Clerk of the Land Use Hearing Officer shall be appointed by the Land Development Director. The Clerk shall keep the minutes of the Hearing Officers' proceedings, including evidence presented, the name of all witnesses giving testimony, findings of fact by the Hearing Officers and the determination of the Hearing Officers. The Clerk shall be the custodian of the official record of the Hearing Officer and shall keep indexed records of all orders, resolutions, transactions, findings and determinations. All such records shall be official public records and shall be covered by all Florida Statutes pertaining to public records.

Section 976 - 979 Reserved

Section 980 Enforcement of Site Requirements (Revised 02/05/19 – Ord. No. 19-008)

The purpose of this Section is to enforce the conditions of approval from the Planning Commission, Land Use Hearing Officer, and the BoCC.

A. Inspection

The Department shall implement a procedure for periodic inspection of development work in progress to ensure compliance with the development approvals which authorized the activity.

B. Minor Deviations (Revised 3/17/10 – Ord. 10-011)

A Minor Deviation to approved Level 2 Review plans may be approved by the County Engineer or his/her assigns in the field and documented by the applicant through submittal of as-built plans. Minor Deviations include the following changes to approved plans:

1. Any minor adjustment in engineering or construction details which in no way affects the approved use or function of the development, or its surrounding uses, owners or properties including, but not limited to;
 - a. Changes to materials such as pipe composite, plant species, roadway or parking lot base, sprinkler head emitter, etc. that still meet the standards set forth in this Code;
 - b. Changes in stormwater pond dimensions so long as volume is not diminished or structures are not relocated; or,
 - c. Deviations in intersection or sidewalk alignment no greater than 15 feet;
2. A reduction in the number of lots; or
3. Any minor adjustment in internal road alignment, either horizontal or vertical, which does not affect the function of the development and does not violate any other agency regulations.

If the change in plans does not meet the criteria listed above or the County Engineer interprets a Minor Deviation request to be a Major Deviation, the applicant may either submit application for a Minor Revision as enabled in Section 704.C or submit a full re-review of the Level 2 Plans, whichever the County Engineer determines. Regardless of the process by which a deviation is approved, it shall be the applicant's responsibility to provide as-built plans to document the changes to

the approved Level 2 Review Plans. Certificate of Occupancy shall not be granted until as-built plans are submitted.

C. *Major Deviations (Revised 3/17/10 – Ord. 10-011)*

1. If the work is found to have one or more Major Deviations, the County Engineer shall:
 - a. Place the matter on the next agenda of the Development Review Committee (DRC) allowing for adequate notice; or,
 - b. Issue a stop work order and refuse to allow occupancy of all or part of the development if deemed necessary to protect the public interest. The order shall remain in effect until the DRC determines that work or occupancy may proceed pursuant to the decision of the DRC; or
 - c. Refer the matter to the Building and Codes Division, if it appears that the applicant has committed violations within the jurisdiction of the Code Enforcement Special Magistrate.

D. *Action of the Applicant After Revocation of Development Order*

After a decision, approval or permit has been revoked, development activity shall not proceed on the site until a new plan or permit is granted in accordance with procedures for original approval.

Section 981 Enforcement of Code Provisions

The Code Enforcement Board and the Codes Enforcement Division shall enforce this Code according to the procedures set forth in Polk County Ordinance 85-06.