

POLK COUNTY DEVELOPMENT REVIEW COMMITTEE STAFF REPORT

DRC Date:	April 8, 2024	Level of Review:	Level 4 Review
PC Date:	August 7, 2024	Type:	LDC Text Amendment
BoCC Date:	August 20, 2024	Case Numbers:	LDCT-2024-11
	September 3, 2024	Case Name:	LDC Ch. 9 Text Amendment
Applicant:	Polk County	Case Planner:	Ian Nance

Request:	A County-initiated LDC Text Amendment to amend multiple sections of Chapter 9 to conform procedures and time frames for reviewing development applications with state requirements; clarifying terminology regarding extending the time frame for setting De Novo hearings; clarifying that a tie vote during a public hearing results in a denial; providing attendance standards for Planning Commission members; allowing legal advertising for Land Development public hearings on a County-approved website; providing for severability; and providing for an effective date.
DRC Recommendation:	Approval
Planning Commission Vote:	Approve 7-0

Among the changes to Chapter 9:

- Section 905 (Level 2 Reviews) – Adding shot-clock language and waiver opportunities for Level 2 Reviews (DRC approval), as provided by the state. Amending existing terminology for relevance.
- Section 906 (Level 3 Reviews) – Adding shot-clock language and waiver opportunities for Level 3 Reviews (Planning Commission approval), as provided by the state. Amending existing terminology for relevance.
- Section 907 (Level 4 Reviews) – Adding shot-clock language and waiver opportunities for Level 4 Reviews (BoCC approval), as provided by the state. Amending existing terminology for relevance. Adding that a tie vote among Board members results in a denial of the application.
- Section 908 (Level 5 Reviews) – Adding shot-clock language and waiver opportunities for Level 5 Reviews (Plats), as provided by the state. Amending existing terminology for relevance.
- Section 922 (De Novo Hearings) – Amending existing language to provide clarity when requesting a continuance or extension. Adding that a tie vote among Board members results in a denial of the application.

- Section 960 (Public Notice) – Allowing for public hearing notices for certain Level 3 & 4 Review applications to be published on a County-approved website in addition to a printed newspaper.
- Section 972 (Development Review Committee) – Amending language to conform with changes made with this ordinance.
- Section 973 – Deleting “Citizen Boards” and replacing with the standards for the Planning Commission from Section 974. Adding attendance requirements for Planning Commission members and alternates.

Summary:

Changes to procedures for land development applications in Chapter 9 of the Land Development Code (LDC) are overdue. The state has adopted statutes intended to provide timelines for review and approval that need to be incorporated into the Code. These so-called “shot-clock” rules require the County to approve or deny Level 2 projects within 120 days after receiving a complete application. The state mandates 180 days for decisions on Level 3-5 reviews. Incomplete applications will be automatically withdrawn for all levels of review within 30 days. The new language does allow for waivers to these deadlines, a policy the County already follows.

Changes to how the County advertises public hearings for certain Land Development applications are included in this amendment, in accordance with state rules. At present, all cases requiring public hearings are required to have a legal ad published in a local printed newspaper. This change will allow such legal ads to also be published on a County-approved website.

Finally, the Board has directed staff to amend the LDC to require regular attendance for Planning Commissioners. If a PC member misses more than three hearings within a 12-month period, the member will be automatically removed and replaced. Two alternate PC members will be required to attend hearings on a rotating basis, also. Failure to attend three required hearings will also result in dismissal.

In addition to these substantive changes to the processing and review of Land Development cases, this amendment allows staff to clarify current policy. For instance, the Code is unclear on how to proceed if the Planning Commission or Board votes on an application that ends in a tie. With this amendment, these cases will be denied without prejudice. Staff recommends approval of this amendment.

Relevant Sections, Policies, and/or Regulations to Consider:

- Florida Statute 125.022
- Florida Statute 163.3174
- Florida Statute Chapter 50
- Comprehensive Plan Section 4.301 – Implementation
- Comprehensive Plan Section 4.304 – Monitoring
- Comprehensive Plan Section 4.305 – Plan Amendments
- LDC Section 303: Criteria for Conditional Uses
- LDC Chapter 8: Subdivisions

LDC Section 903: Review Procedures
LDC Section 905: Level 2 Reviews
LDC Section 906: Level 3 Reviews
LDC Section 907: Level 4 Reviews
LDC Section 908: Level 5 Reviews
LDC Section 912: Code Amendments, Land Use District Modifications and Comprehensive Plan Amendments
LDC Section 922: De Novo Hearing
LDC Section 960: Public Notice
LDC Section 972: Development Review Committee
LDC Section 973: Citizen Boards
LDC Section 974: Planning Commission

Findings of Fact

- *This is a County-initiated LDC Text Amendment to amend multiple sections of Chapter 9 to conform procedures and time frames for reviewing development applications with state requirements; clarifying terminology regarding extending the time frame for setting De Novo hearings; clarifying that a tie vote during a public hearing results in a denial; providing attendance standards for Planning Commission members; allowing legal advertising for Land Development public hearings on a County-approved website.*
- *F.S. 125.022 (1) states the following:*

“Within 30 days after receiving an application for approval of a development permit or development order, a county must review the application for completeness and issue a letter indicating that all required information is submitted or specifying with particularity any areas that are deficient. If the application is deficient, the applicant has 30 days to address the deficiencies by submitting the required additional information. Within 120 days after the county has deemed the application complete, or 180 days for applications that require final action through a quasi-judicial hearing or a public hearing, the county must approve, approve with conditions, or deny the application for a development permit or development order. Both parties may agree to a reasonable request for an extension of time, particularly in the event of a force majeure or other extraordinary circumstance. An approval, approval with conditions, or denial of the application for a development permit or development order must include written findings supporting the county’s decision. The timeframes contained in this subsection do not apply in an area of critical state concern, as designated in s. 380.0552.”
- *F.S. 163.3174 states a local planning agency shall, “Review proposed land development regulations, land development codes, or amendments thereto, and make recommendations to the governing body as to the consistency of the proposal with the adopted comprehensive plan, or element or portion thereof, when the local planning agency is serving as the land development regulation commission or the local government requires review by both the local planning agency and the land development regulation commission.”*

- *On May 11, 2022, Governor DeSantis signed HB 7049 which amended s.50.011, F.S. (Ch. 2022-103) to allow the publication of legal ads on County-approved publicly accessible websites.*
- *LDC Section 903 states, “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.”*
- *LDC Section 912 allows 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.*
- *On July 2, 2024, the Board adopted a Resolution directing departments and divisions to publish legally required advertisements and public notices in both a newspaper and on a County-designated publicly accessible website and establishes publications on the Polk County Publicly Accessible Website to be the official and controlling version.*
- *On July 2, 2024, the Board adopted an Ordinance to provide for the publication of legal advertisements and public notices on a publicly accessible website.*
- *This application has been reviewed for consistency with applicable Comprehensive Plan and LDC policies.*

The Land Development Division, based on the information provided with the proposed text amendment application, finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Staff recommends **Approval of LDCT-2024-11**.

Analysis:

Sections 905-908

F.S. 125.022 (1) provides timelines for the review and approval of Land Development applications. Currently, the County’s policy is less stringent with no so-called “shot-clock” language mandating a length of review. The state’s criteria introduce a 30-day period in which an application is submitted and reviewed for completeness. Failure to submit a complete application will result in a withdrawal. Following this, an application is submitted to Development Review Committee (DRC) staff for a sufficiency review to determine if an application meets all Comprehensive Plan and LDC standards. For Level 2 Reviews, the project must be approved or denied within 120 days. For those cases that require a public hearing (Levels 3-5), the voting body must act on an application within 180 days. The County has been allowing waivers to these timeframes, in accordance with state statute; this amendment will formalize this waiver.

What remains from current LDC language are the time frames for DRC staff review for submittals and re-submittals - 10 working days for Level 2 Reviews and 15 working days for Level 3-5 Reviews.

Section 960

On July 2, 2024, the Board directed divisions to prepare legal ads intended for public hearings for publication on a County-designated publicly accessible website, in addition to a printed newspaper, and adopted an ordinance to provide for the same in accordance with F.S. Chapter 50. This amendment will add language to conform the Code with state law and the Board's actions.

Sections 973 & 974

The Board directed Land Development staff to amend the Code to require regular attendance for Planning Commission members and have alternates available the day of the hearing in the event of last-minute cancellations. The role of the Planning Commission as the County's Local Planning Agency is vital to the planning process, whether as the final arbiter of conditional uses or a recommending body to the Board for changes and amendments to the Future Land Use Map, Comprehensive Plan, or Land Development Code. The vote of the seven members ensures in the public trust that a review of a development application has received full merit and discourse from those appointed and qualified to make such decisions.

In accordance with the Board's directive, this amendment will allow for three absences from a member throughout a rolling 12-month period. If this total is to be exceeded for any reason, the member will be dismissed and will be ineligible to be re-appointed for a year. Furthermore, at least two alternate members will be required attend Planning Commission hearing whether they are needed to fill a known vacancy by a regular member or not. This will allow a full panel in the event of a last-minute cancellation. Land Development will create a schedule to rotate the responsibilities of these members. Failure to attend three meetings when required will result in the vacation of that seat, and the Board will appoint another alternate member.

To accomplish these changes, the standards in LDC Section 974 were migrated into Section 973. This allowed staff to eliminate old or redundant language relating to citizen boards while incorporating these new policies.

Limits of the Proposed Ordinance

This ordinance is the result of multiple policy changes as mandated by the state and the Board. These are changes of function rather than an amendment that creates new uses, amends maps, or changes the levels of review for existing uses. It affects Level 2-5 Review applications throughout the County, however the state "shot-clock" rules have no bearing on the Green Swamp ACSC. The intent of the County is to process applications in the Green Swamp ACSC similar to other cases, with the exception that leniency for the overall review period is granted due to the pervasive wetlands, flood hazard zones, and environmentally sensitive areas that could require additional study and prolong development reviews. Complete applications will still be required within 30 days.

Consistency with the Comprehensive Plan & Land Development Code

The request is consistent with the Comprehensive Plan and the Land Development Code. Policies within the Comprehensive Plan and LDC allow for changes and amendments to these plans as directed by the BoCC.

Comments from Other Agencies: None

Draft Ordinance: Under separate attachment