



Monroe County Planning Commission Rules of Procedure

The Monroe County Planning Commission, under Section 102-20(b)(10), Monroe County Land Development Code, hereby adopts these rules of procedure which shall govern all proceedings of the Monroe County Planning Commission.

1. Conduct of Meetings.

- A. The Planning Director is instructed not to place any non-appeal application or non-appeal proposal on the Planning Commission agenda, unless and until in the professional judgment of the Director, all the documentation required by the Monroe County Codes and Monroe County Comprehensive Plan are included in the application, that the application is generally in compliance with the technical requirements of the Monroe County Codes and Monroe County Comprehensive Plan, and that the application provides all the information reasonably needed by the Commission to render its decision. The applicant may either revise the application in accordance with the recommendations of the Planning Director or may request, in writing, that the application be submitted to the Planning Commission at the next regularly scheduled meeting that will meet the advertisement requirements. Notwithstanding any other rule of procedure, as Monroe County Land Development Code (LDC) § 102-185(c) makes plain that failure to file a timely LDC § 102-185(a) administrative appeal to the Planning Commission concerning a decision, determination, or interpretation with respect to the Land Development Code or Comprehensive Plan by operation of law “**shall constitute a waiver of any rights under this Land Development Code and Comprehensive Plan to appeal any decision, interpretation, or determination**”, the Planning Commission mandates consistent therewith that, on said basis that LDC § 102-185(c) by operation of law mandates that an untimely appeal “**shall**” constitute such automatic waiver, no Planning Commission notice of appeal (appeal application) shall be processed if the Planning Director finds the appeal has not been timely and/or properly filed.¹ For the purpose of processing the controlling Planning Commission administrative appeal date and deadline, an LDC § 102-185(c) waiver resulting from the failure to file a timely and proper appeal being irrevocably jurisdictional in nature, the Planning Commission mandates consistent therewith that an individual or entity’s original failure to file a timely and proper appeal cannot be overridden, obviated, or overcome, or revived, reanimated, renewed, cured, or curatively recreated, by originally failing to file a timely and proper appeal of a decision, determination, or interpretation with respect to the Land Development Code or Comprehensive Plan and then later requesting and/or obtaining the same or similar decision, determination, or interpretation. In accordance with these bases and mandates, requesting and/or obtaining the same or a similar decision, determination, or interpretation shall not create a ‘new’ 30 calendar day window to override or obviate an individual or entity’s original failure to file a timely and proper appeal of the original decision, determination, or interpretation the same or similar to the one later requested and/or obtained.
- B. Any information or records (including but not limited to drawings, photos, maps, and documents), or legal memoranda, from the applicant and/or appellant must be submitted to and received by the Planning Commission Supervisor no later than ten (10) calendar days before the Planning Commission meeting date at which the application and/or appeal is scheduled to be considered by the Planning Commission. If any such information or records, or legal memoranda, from the applicant-appellant is submitted on the tenth calendar day prior to said meeting date, it must be received by the Planning Commission Supervisor no later than 12:00 P.M. noon to be considered by the Planning Commission. It shall constitute legally inadequate notice to County staff, to counsel for the County, or to the Planning Commission, for County staff, for County counsel, or for the Planning Commission, to adequately understand, evaluate, or respond to such information or records, or to such legal memoranda, if any are submitted in non-compliance with this rule of procedure.

¹ Otherwise stated the Planning Commission mandates that, on the basis of LDC § 102-185(c)’s plain meaning that prescribes that an untimely appeal “**shall**” automatically constitute “a waiver of any rights under this Land Development Code and Comprehensive Plan to appeal any decision, interpretation, or determination” made by an administrative official, the Planning Director shall not accept or process a Planning Commission notice of appeal (appeal application) if the Planning Director finds that the appeal has not been timely and/or properly filed.

- C. Any information, petitions, or records (including but not limited to drawings, photos, maps, letters, and documents), or legal memoranda, from members of the public must be submitted to and received by the Planning Commission Supervisor no later than five (5) calendar days before the Planning Commission meeting date at which the applicant and/or appellant's application and/or appeal is scheduled to be considered by the Planning Commission. It shall constitute legally inadequate notice to the applicant, to County staff, to counsel for the County, or to the Planning Commission, for the applicant, for County staff, for County counsel, or for the Planning Commission, to adequately understand, evaluate, or respond to such information or records, or to such legal memoranda, if any are submitted in non-compliance with this rule of procedure.
- D. A majority vote of the Planning Commission is required to allow the information, petitions, or records, or memoranda, as referenced in the two foregoing rules of procedure, which are submitted in non-compliance with said rules' submission requirements, into the record. Such materials may only be submitted in person by Planning Department staff, by the applicant, or by the submitting member of the general public on the day of the Planning Commission meeting, and ten (10) copies² of such materials must be provided by the submitting staff person, by the applicant, or by the submitting member of the general public, to the Planning Commission Supervisor at the beginning of the Planning Commission meeting.
- E. In presentation by speakers at the public hearing, the Planning Commission expressly reserves the right to limit presentations that are not materially relevant to the application (including but not limited to applications for appeals) under review, or that are clearly repetitive of points previously made. Once a person has addressed the Planning Commission, he or she may be permitted to return to the lectern once for purposes of clarifying his or her prior-made comments only; this may occur only after all other members of the public have spoken, and such clarifying speaker shall be limited to only one (1) minute, unless the issue is quasi-judicial in nature. In that case, the applicant may return to the lectern to conclude his or her position at the end of the public hearing, after which only County staff may later comment.
- F. The Chairperson of the Planning Commission or the presiding member of the Planning Commission may limit presentations to three minutes per individual speaker, or to five minutes to those natural persons representing an organization (non-profit or for-profit) or legal person.
 - (1) The first person representing such organization or legal person shall be allowed the five minutes. Subsequently, all other speakers on behalf of such organization or legal person shall have no more than three minutes to address the Planning Commission on behalf of said organization or legal person.
 - (2) The Planning Commission may request proof of authority to speak on behalf of an organization or on behalf of a legal person, and may request proof of the legal existence of an organization or of the legal existence of a legal person.
- G. In accordance with Rule Regulating the Florida Bar 4-3.9 (Florida Rule of Professional Conduct 4-3.9), a lawyer representing a client before the Planning Commission when it is acting as a legislative body or when the Planning Commission is acting as an administrative entity in a non-adjudicative proceeding, is required to disclose that the appearance is in a representative capacity, and that lawyer shall conform to the provisions of Rule Regulating the Florida Bar (Florida Rules of Professional Conduct 4-3.3(a) through 4-3.3(d) and 4-3.4(a) through 4-3.4(c)).
- H. In quasi-judicial proceedings and in quasi-legislative proceedings, any applicant, agent of the applicant, or member of the public purporting to offer expert testimony shall identify any educational, occupational, and other ostensible expertise that they possess which is materially relevant to their qualifications to speak as an expert regarding the matter under consideration. Any Planning Commission Commissioner, or counsel, may inquire further as to such expertise.

2. Burdens of Proof and Standards of Review.

- A. The applicant has the initial burden of proof to show that its application conforms to the Monroe County Codes, the Monroe County Comprehensive Plan, and relevant Florida general law.
- B. The appellant has the initial relevant burden of proof and bears the initial burden to satisfy the relevant standard of review when appealing a decision, determination, or interpretation by any administrative official of the County.

3. Sworn Statements and Written Comments.

- A. The presence and ability to cross-examine the author of an affidavit or similar sworn or attested statement is required for its admissibility into the record of the Planning Commission, unless for good cause shown (such as, for example,

² One (1) copy for each of the five members of the Planning Commission, one (1) copy for counsel to the Planning Commission, one (1) copy for County staff, one (1) copy for County counsel, and two (2) copies available for the applicant and members of the public.

the death of the affiant); this requirement may be waived and/or forfeited by a failure to object to the admission of such affidavit. Although, notwithstanding the preceding, an affidavit initially submitted with a non-appeal application to the Planning Director or to Planning Department staff will be accepted into the Planning Commission record if expressly considered or relied upon by the Planning Director or by Planning Department staff in making his, her, or their decision, interpretation, or determination, when such decision, interpretation, or determination forms the principal subject of an appeal before the Planning Commission.

- B. Applicants, agents for applicants, and members of the general public may submit timely written comments to the Planning Commission Supervisor for consideration by the Planning Commission. Properly and timely submitted written comments may be considered as part of the record as provided elsewhere in these Rules of Procedure and in conformity with the Monroe County Codes. All such written comments, being public records, shall be made available for review by the applicant and members of the public.

4. Quasi-judicial proceedings.

- A. All quasi-judicial proceedings shall be in conformity with Florida general law.
- B. All quasi-judicial proceedings shall be in accordance with Section 2-202, Monroe County Code of Ordinances.
- C. All discussions between Planning Commission members and applicants, their agents, or their counsel, or members of the general public, regarding a quasi-judicial matter to be considered or decided by the Planning Commission, shall take place at public hearings and be part of the public record. Ex parte communications between the applicant, his, her, or its agent(s), and his, her, or its counsel, or members of the general public, regarding a quasi-judicial matter to be considered or decided by the Planning Commission member, should not occur. However, if any information is communicated by such person or party to a Planning Commission member regarding any quasi-judicial matter to be considered or decided by the Planning Commission, the Planning Commission member must disclose that communication and information at the public hearing prior to any consideration, discussion, or decision of that item.
- D. For quasi-judicial hearings involving development applications (including but not limited to requests for variances, etc.), the following will be the order of presentation, unless varied at the meeting by the Planning Commission:
 - (1) Monroe County staff will first present its report, followed by the applicant;
 - (2) The hearing will then be opened for public comment;
 - (3) After public comment, the applicant will have an opportunity to make concluding remarks and/or to respond to public comment(s);
 - (4) After this, Monroe County staff may present any clarifying information to the Planning Commission;
 - (5) The Planning Commission Commissioners will then deliberate the matter, and the Planning Commission shall thereafter conduct its vote;
 - (6) At any time during the hearing, the Planning Commission Commissioners may ask County staff questions, and may ask questions of the applicant or of public speakers.
- E. The failure to file a timely, proper, and sufficiently specific objection, or to present a timely and sufficiently specific legal argument or ground for relief, or to timely raise a sufficiently specific materially relevant legal issue, shall be considered an irrevocable jurisdictional waiver and failure to preserve such objection, argument or ground for relief, or legal issue, and/or irrevocable jurisdictional forfeiture of the opportunity to file such objection or to present such legal argument, ground for relief, or legal issue, and failure to preserve such objection, argument or ground for relief, or legal issue.
- F. If a proper, timely, and specific written motion for reconsideration raising any and all alleged deficiencies regarding a Planning Commission resolution's clear statement of specific findings of fact, statement upon which such facts were determined, summaries, conclusions of law, or specific reference to the relevant Code standards to the attention of the Planning Commission acting in its capacity as the original lower tribunal in administrative and/or judicial proceedings, appeals, or actions seeking administrative or judicial relief from such Planning Commission resolution, said motion of which shall only exhaustively identify any and all such alleged deficiencies and move for execution of a more complete resolution addressing the alleged deficiencies brought to this lower tribunal's attention by said motion, is not received by the Planning Commission Supervisor or his or her authorized designee on behalf of the Planning Commission by or before 5:00 P.M. on the fifteenth calendar day from the date the Planning Commission Chair, Vice-Chair, or presiding officer executed the relevant Planning Commission resolution, the failure of a party to do so in conformity with this rule shall constitute a binding and irremediable failure to preserve error on those points and an irrevocable waiver of those issues.
- G. On the basis of the Monroe County Planning Commission's determination that Monroe County Land Development Code (LDC) § 110-7 applies exclusively to Sunshine panel collegial bodies such as the Monroe County Planning Commission, the Monroe County Planning Commission general counsel is instructed to, directed to, and shall reject any motion for reconsideration that on its face fails to pertain to deficiencies with regard to provision of the minimum

required elements spelled out in LDC § 110-7(b)(1)-(3) and/or that on its face fails to comport with the plain meaning of Monroe County Planning Commission Rule 4.(F.).

H. All testifying witnesses shall be sworn.

I. Formal rules of evidence shall not apply, but basic due process³ shall be observed and shall govern the quasi-judicial proceedings before the Planning Commission. Discovery (including, but not limited to, depositions, requests for production, requests for admission, and interrogatories) is not permitted or authorized in Planning Commission proceedings.

5. **Meeting Decorum.**

A. **Scope of Discussion and Comments.**

- (1) During each item before the Planning Commission, all comments, remarks, statements, and arguments shall be exclusively be made at the lectern, to the Planning Commission as a whole, into the microphone, and, if televised, visible to the T.V. audience. No comments, remarks, statements, or arguments may be made away from a location directly in front of a microphone. The purpose of this requirement is to ensure that all comments, remarks, statements, or arguments may be entered into the minutes and/or the record.
- (2) No applicant, counsel for an applicant, or member of the public may direct questions to individual members of the Planning Commission.
- (3) No applicant, counsel for an applicant, or member of the public may direct questions to a presenter, although public comment from such persons may result in the Planning Commission asking a question to a presentation presenter to clarify a matter.
- (4) No applicant, counsel for an applicant, or member of the public may direct questions to County staff, although public comment from such persons may result in the Planning Commission asking a question to County staff to clarify a matter, although a party (or, if represented, counsel for that party's counsel) may direct questions to County staff during authorized cross-examination in a duly noticed quasi-judicial proceeding.
- (5) No applicant, counsel for an applicant, or member of the public may direct questions concerning materially relevant elements of a claim to a Planning Commission member, to County staff, to counsel for the County, or to counsel for the Planning Commission, although public comment from such persons may result in the Planning Commission asking such a question to County staff, to counsel for the County, or to counsel for the Planning Commission.
- (6) No applicant, counsel for an applicant, or member of the public may direct questions to counsel for the County or to counsel for the Planning Commission.
- (7) No member of the public may direct questions to an applicant, although public comment from such persons may result in the Planning Commission asking a question to an applicant to clarify a matter.
- (8) No member of the public may direct questions to counsel for an applicant.
- (9) No applicant, counsel for an applicant, or member of the public may direct questions to the audience, or to members of the public.
- (10) Each speaker shall state for the record his or her name for the record, and, if applicable, the organization or legal person represented, if any.
- (11) Each speaker's remarks must be directed to the Planning Commission as a whole and shall not be to individual Planning Commission members, shall not be to the applicant (including but not limited to the applicant-appellant), shall not be to counsel for the applicant, shall not be to County staff, shall not be to counsel for the County, shall not be to counsel for the Planning Commission, and shall not be to the audience or gallery or members of the general public.
- (12) Each speaker shall confine his or her comments exclusively to the proposition before the Planning Commission he or she has requested to speak on.
- (13) Speakers may not address, or persist in addressing, immaterial or irrelevant topics.
- (14) Speakers may not use any form of profanity or abusive comments.
- (15) Conduct or acts in violation of a Scope of Discussion and Comments rule of procedure approved herein shall not be considered by the Planning Commission in making its final decision on the matter before it.

³ "Basic due process" shall be construed as synonymous with the term "fundamental due process."

B. Prohibited Conduct.

- (1) Speakers may not refuse to yield the lectern or podium when the Planning Commission Chairperson or the presiding member of the Planning Commission has stated that his or her speaking time is up.
- (2) One speaker, whether a natural or a legal person, may not donate or transfer his, her, or its speaking time to another speaker.
- (3) The Planning Commission Chairperson or the presiding member of the Planning Commission may notify and warn a speaker that his or her comments have exceeded the scope of the subject matter of the proposition which he or she had signed up to address.
- (4) All persons and entities are prohibited from being unduly repetitious or presenting matters not materially relevant to the item under consideration.
- (5) Personal attacks shall be considered immaterial and irrelevant to the hearing or proceeding and shall constitute a breach of the privileges to address or offer comments, remarks, arguments, statements, or presentations to the Planning Commission, and shall not be tolerated.
- (6) All persons and entities are prohibited from committing acts of violence toward any person or entity, and all persons and entities are prohibited from making threats of violence toward any person or entity.
- (7) No clapping, applauding, cheering, singing, heckling, booing, or shouting from the audience or gallery, or verbal outbursts in support of or in opposition to a speaker's remarks, are permitted. All such behavior shall be considered discourteous, disorderly, and contemptuous conduct.
- (8) No clapping, applauding, cheering, singing, heckling, booing, or shouting from the audience or gallery, or verbal outbursts in support of or in opposition to a Planning Commission Commissioner's remarks, are permitted. All such behavior shall be considered discourteous, disorderly, and contemptuous conduct.
- (9) No clapping, applauding, cheering, singing, heckling, booing, or shouting from the audience or gallery, or verbal outbursts in support of or in opposition to assertions, arguments, or statements by legal counsel for the County or like remarks of legal counsel for an applicant (including but not limited to legal counsel for an applicant-appellant), are permitted. All such behavior shall be considered discourteous, disorderly, and contemptuous conduct.
- (10) Cellular telephone conversations shall be prohibited during Planning Commission meetings. All telephone ringers in the Planning Commission meeting room shall be set to silent mode.
- (11) Any individual or organizational or legal person representative who attempts to disrupt a Planning Commission meeting shall be subject to legal liability and action as authorized by law.
- (12) The Planning Commission Chairperson or the presiding member of the Planning Commission is authorized to request an individual who violates and thereafter refuses to cease violating and continues to violate the behavioral conduct rules of procedure approved herein to leave the Planning Commission meeting room, and may request for a duly authorized law enforcement agency officer to physically remove from or physically escort out of a Planning Commission meeting room an individual who violates and thereafter refuses to cease violating and continues to violate the behavioral conduct rules of procedure approved herein.
- (13) Conduct or acts in violation of a behavioral conduct rule of procedure approved herein shall not be considered by the Planning Commission in making its final decision on the matter before it.

6. Rules of Debate.

- A. Every Planning Commission Commissioner shall exclusively confine his or her comments, statements, remarks, contentions, and questions to the question under debate.
- B. When a motion is presented and seconded, it is under consideration and no other motion shall be received thereafter, except to amend, to adjourn, or to lay on the table (i.e., to continue to a date certain or to table to a date uncertain/indefinitely, such as to sometime after the occurrence of an independent event which is anticipated to occur at an unknown time in the future).

7. Decisions.

- A. Only one Planning Commission member may have the floor at a time. When a Planning Commission member has the floor, no other Planning Commission member may interrupt.
- B. Deliberations of the Planning Commission, and decisions on all matters by the Planning Commission, shall be made at the public meeting at which the application or proposal is heard, unless the Planning Commission considers additional time for deliberation necessary and continues the hearing to another meeting.
- C. An application may not be withdrawn by an applicant or petitioner after the Planning Commission vote has been called or ordered by the Planning Commission Chairperson or other member of the Planning Commission.

- D. When the Planning Commission's vote on a non-appellate matter is evenly divided, the motion shall be deemed to have failed.
- E. When the Planning Commission is evenly divided on a motion to approve or deny an appeal application seeking to overturn a decision, determination, or interpretation by any administrative official of the County, then such evenly divided vote shall constitute a final decision of the Planning Commission denying the appellant's request for reversal of the decision, determination, or interpretation of the administrative official of the County.
- F. When a question has been decided by a majority vote of the Planning Commission, a Planning Commission Commissioner voting on the prevailing side may move for reconsideration of the question at the same meeting.

8. **Conflicts.**

In any instance where a procedure established by these Rules of Procedure violates or is in irreconcilable conflict with federal or state law or County ordinance, the procedures established hereunder shall be inoperative to the extent of such irreconcilable conflict. If any portion hereof is held by an administrative hearing officer or court of competent jurisdiction to be invalid, such portion shall be deemed severable from the remainder and, to the extent possible, the remainder shall be operative without the invalid portion.

9. **Robert's Rules of Order.**

In all events and cases not covered by these rules of procedure, Robert's Rules of Order shall be used as a general guide and may be followed by the Planning Commission Chairperson or presiding member of the Planning Commission, unless the Planning Commission overrules the Chairperson or presiding member of the Planning Commission.